October 30, 2013

BY ELECTRONIC SUBMISSION

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RE: Credit Risk Retention – Comments Regarding Servicer Advance Receivables

OCC: Docket Number OCC-2013-0010
SEC: Rel. No. 34-64148; File No. S7-14-11
Fed: Docket No. R-1411
FHFA: Comments/RIN 2590-AA43
FDIC: RIN 3064-AD74
HUD: HUD No. 11-049

Ladies and Gentlemen:

Ocwen Financial Corporation ("*Ocwen*") appreciates the opportunity to comment on the Proposed Rules relating to Credit Risk Retention referenced above (the "*Reproposal*") released

jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, the Federal Housing Finance Agency and the Department of Housing and Urban Development (collectively, the "*Agencies*"). Our comments also refer to the supplementary information to the Reproposal (the "*Commentary*") and the text of the proposed common rules (the "*Reproposed Rules*"). Ocwen is a residential mortgage loan servicer. Ocwen currently services over $450 billion by outstanding principal balance of residential mortgage loans. In the United States there are currently in excess of $7.5 trillion by outstanding principal balance of residential mortgage loans being serviced by residential mortgage loan servicers. Since 2005, there have been approximately $21 billion by principal amount of securitizations backed by servicer advance receivables.

We are keenly interested in the Reproposed Rules as they pertain to structured servicer advance facilities ("*SAFs*"), which provide liquidity to servicers in residential mortgage-backed securities ("*RMBS*") transactions and allow servicers to finance their contractual rights to reimbursement for advances and expenses paid by servicers ("*servicer advances*") that ensure continuity of payment to investors and preserve the collateral underlying the mortgage securitization market. The rights to be reimbursed for servicer advances are referred to as "*servicer advance receivables*" or "*SARs*".

The Reproposed Rules would require the sponsor of any asset-backed securities offering to retain at least 5 percent of the credit risk relating to the assets collateralizing the asset-backed securities, as required by section 15G of the Securities Exchange Act of 1934 (the "*Exchange Act*"), as added by section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "*Dodd-Frank Act*"). Section 15G(c)(1)(G) and section 15G(e) of the Exchange Act require the Agencies to provide a total exemption or partial exemption from the risk retention requirements for certain transactions and section 15G(e)(1) permits the Agencies to adopt other exemptions to the risk retention requirements of section 15G of the Exchange Act.

As we discuss below, we believe that SARs are an asset class that should be exempted from the risk retention requirements of section 15G of the Exchange Act. Nevertheless, if the Agencies do not believe SARs should be so exempted, we believe, as discussed below, that the unique structures used by SAFs should be accommodated more clearly by certain modifications to the Reproposed Rules.

I. Servicer Advances And Servicer Advance Facilities Background and Structure.

Servicers of residential mortgages that are collateral for RMBS (and in some cases that are held for whole loan investors) are required under the terms of the related servicing agreements to make servicer advances. The servicer advances provide continuity of payment to the investors

and preserve the related collateral. Servicer advances typically cover, with respect to each mortgage and to the extent the related borrower is obligated to pay but has failed to pay, principal and interest payments on the underlying mortgages, property taxes and assessments and property insurance premiums. In addition, servicer advances may also cover other costs necessary to preserve the value of the underlying mortgaged properties and expenses incurred by servicers in pursuing foreclosures and managing properties acquired by the securitization vehicle. SARs represent the contractual right of servicers of residential mortgages to be reimbursed for servicer advances. The SARs do not accrue interest and the related servicer is not otherwise entitled to receive interest on any servicer advance it makes.

Servicer advances are typically reimbursed, prior to holders of the related RMBS, out of collections or proceeds received in connection with the related mortgage loan. In most cases servicer advances may also be reimbursed from collections on the entire mortgage loan pool prior to payments to the related RMBS, to the extent not recoverable from proceeds of the related mortgage loan or mortgaged property. Due to these attributes, servicer advances constitute liquidity enhancement, and not credit enhancement, to the related RMBS.

With the tremendous increase in mortgage delinquencies and defaults since the onset of the financial crisis, servicers have been required to fund correspondingly significant increases in servicer advances. For non-bank servicers, this requires much higher levels of capital than ever before and presents all servicers with serious liquidity challenges. To help address these liquidity needs, and to address lender and investor concern regarding insolvency risk relating to servicers, non-bank servicers have relied on securitization financing structures to fund these obligations. Because SARs are generally repaid in a matter of months and new SARs are created continuously, these financing facilities are typically structured as revolving master trusts.

In a typical SAF structure, all SARs arising under a defined set of the servicing agreements within a servicer's mortgage loan servicing portfolio are transferred to a special purpose entity (the "*depositor*"), which is a wholly-owned subsidiary of the servicer and designed to be "bankruptcy-remote" from the related servicer. The depositor transfers the SARs to the issuing entity (typically, a statutory trust), which issues one or more series of revolving notes and/or term bonds backed by the SARs. As new servicer advances are made by the servicer, the related SARs continue to be transferred by the servicer to the depositor and by the depositor to the issuing entity. During the revolving period, new SARs are purchased by the issuing entity using reimbursements of existing servicer advances (net of the issuer's expenses, including interest payments on the notes issued under the related SAF) and draws on the revolving notes.

One or more series of notes may be issued from time to time under a SAF. Each series (and each class within each series) is backed by the entire pool of SARs owned by the issuing entity. A series may be comprised of a single class of notes, or it may include senior and subordinate

notes. SAFs, however, have not issued any interest-only ABS interests or any premium ABS interests.

Each series and each class issued by a SAF may require a different level of credit enhancement. That credit enhancement is typically created in a SAF by over-collateralization, where the principal amount of all of the notes issued under all series will be less than the principal amount of the SARs owned by the issuer and sometimes by one or more series-specific cash reserve accounts. The over-collateralization in a SAF is in the form of equity in the issuing entity (the "*Trust Equity Interest*"), which is subordinated to all notes issued by the issuing entity. This over-collateralization is sized based on advance rates multiplied by the par amount of the underlying SARs. The advance rates are determined based upon the expected amount of time it will take to recover each type of servicer advance using, among other things, historical reimbursement rates. In addition, SAFs typically include performance tests and other triggers tailored specifically to the SAF collateral to protect investors should the cash flows on the SARs decline relative to the assumptions used to size the advance rates, in order to ensure that there is always sufficient over-collateralization to support the outstanding notes. At all times prior to an early amortization event, the Trust Equity Interest is required to be equal to (or greater than) the required level of over-collateralization.

The Trust Equity Interest is required to be held, directly or indirectly, by the servicer/sponsor. In most transactions, it is held by the depositor, which in turn is owned by the servicer. If a series has the benefit of a cash reserve account, the funds on deposit in that cash reserve account are available to pay current interest shortfalls on the notes of the related series and ultimate principal losses that would otherwise be borne by the related series.

Because servicer advances are reimbursed at par and do not accrue interest, SAFs do not have separate allocations of principal collections and interest collections. Instead, all collections received in respect of the SARs during a collection period are aggregated and applied to pay the then due obligations of the issuing entity pursuant to a priority of payments (referred to as the "*payment waterfall*").

A typical SAF payment waterfall allocates available monthly collections to pay or fund, in the following order of priority, (1) all third party expenses of the issuing entity (for example, indenture trustee fees and expenses and statutory trust trustee fees and expenses), (2) interest on the notes issued under each series, (3) amounts required to be deposited in all required reserve accounts, (4) amounts necessary to amortize any series in amortization and (5) the purchase price of newly arising SARs and principal repayments of any revolving variable funding note classes to the extent necessary to maintain the required level of overcollateralization. If any collections remain following the payment in full of those amounts, those remaining collections are distributed to the owner of the Trust Equity Interest. This cash flow mechanism applies all available collections received on the SARs to pay the expenses of the issuing entity and interest

and any required principal payments to the investors before any amount is distributed to the owner of the Trust Equity Interest. Thus, the Trust Equity Interest is fully subordinated to the outstanding notes of all series, and no amounts may ever be distributed to the Trust Equity Interest unless the Trust Equity Interest equals or exceeds the required level of overcollateralization.

II. Servicer Advance Receivables Should Be An Asset Class Exempt From Risk Retention Requirements.

SARs should be an asset class exempt from the risk retention requirements of section 15G of the Exchange Act.

As noted above, servicer advances provide continuity of payment to investors in RMBS and preserve the related collateral. Servicers are contractually required to make servicer advances. The related SARs, which are the assets financed by SAFs, represent the contractual right of the servicer to be reimbursed for servicer advances. Servicers may not refrain from making a servicer advance unless the servicer determines that the specific servicer advance would not be a recoverable advance. A servicer advance is deemed not recoverable if the amount of the servicer advance is not expected to be reimbursed from late collections or liquidation proceeds of the related mortgage loan. As a result, servicers are obligated to make servicer advances on each mortgage loan in an amount up to the estimated liquidation proceeds (which amount depends on the value of the related mortgaged property, as determined from time to time), regardless of the financial ability of the related mortgagor to make payments on the related mortgage loan.

Unlike other financial assets that underlie asset-backed securities, SARs do not represent an extension of credit by a lender to a consumer or other borrower. There are no underwriting criteria, and no lending decision is made. Therefore, one of the fundamental purposes of risk retention, that the alignment of interests resulting from risk retention will result in higher quality and better underwritten assets, is not relevant to and cannot be advanced in the case of SARs. SARs are not originated to be securitized, but rather are the by-products of the RMBS for which the advances are made. They are securitized because that is the safest (for lenders/investors) and most efficient form of funding for this significant capital obligation of servicers. SAFs have not contributed to the financial crisis. Indeed, SAFs date back to the late 1990s, and we are unaware of any SAF in which investors have suffered a loss on their investments.

Servicer advances are of vital importance to RMBS investors because of the liquidity support they provide. SAFs are a key element in assuring that servicers have sufficient funds to make servicer advances, as demonstrated by the fact that most RMBS expressly anticipate in their governing documents that a servicer will finance the related SARs. The continued availability of SAFs is essential to giving RMBS investors a level payment stream consistent with a high

quality securities investment, as opposed to the more irregular cash flow that most whole loan portfolio investors may experience. The importance of a viable SAF market to the stability of financial system was underscored in March 2009 when the Federal Reserve Bank of New York expanded the list of collateral eligible for financing under its Term Asset-Backed Securities Loan Facility to include SARs.

Section 15G(e) permits the Agencies to grant asset class exemptions from the risk retention requirements where such an exemption would: (A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

Because servicer advances are required to be made under the terms of the related RMBS and are not originated for securitization and because the servicer makes no credit decision when a servicer advance is required to be made and has no discretion to refrain from making a servicer advance, granting an exemption SARs as an asset class would satisfy the requirement of §15G(e)(2)(A). In addition, because of the vital importance of SAFs to investors, granting an exemption to SARs as an asset class would satisfy the requirement of §15G(e)(2)(B).

III. Comments to Risk Retention Rules.

If, notwithstanding the discussion in section II above, the Agencies believe that SARs should not be exempt from the risk retention requirements of §15G of the Exchange Act, then we respectfully request the Agencies to modify the Reproposed Rules as discussed below to accommodate the unique structure of SAFs.

Section __.5(c) provides that the general risk retention option for revolving master trusts is the "seller's interest". SAFs do not have seller's interests. Instead, as noted above, SAFs are structured with Trust Equity Interests, which are subordinate to the payment of all notes issued in all series of the related revolving master trust. Clause (2) of the definition of "seller's interest" in the Re-Proposal requires the "seller's interest" to be "pari passu to each series of investors' ABS interests issued by the issuing entity with respect to the allocation of all distributions and losses with respect to the securitized assets prior to an early amortization event". Because the Trust Equity Interest is subordinated, it does not satisfy the "pari passu" requirement of clause (2) of the definition of "seller's interest" and, therefore, is not a seller's interest. There are no other interests created under SAFs that satisfy the definition of "seller's interest".

The Agencies note in the Commentary that some revolving master trusts have subordinated interests similar to "seller's interests" which "perform a loss-absorbing function that is analogous

to a horizontal interest". The Trust Equity Interest is such an interest. It is fully subordinated to all classes and all series of notes issued under the related SAF and it performs a loss-absorbing function in a SAF. Because the Agencies state in the Commentary that they are considering permitting such subordinated interests in revolving master trusts to satisfy the sponsors' risk retention requirement and because SAFs have no "seller's interest", we urge the Agencies to adopt rules permitting Trust Equity Interests that are owned by the sponsor of the SAF or one of its wholly-owned subsidiaries to satisfy the risk retention requirement for sponsors of SAFs.

Section __.5(f) permits both eligible horizontal residual interests and the special horizontal interests described in that section to satisfy the risk retention requirements for a revolving master trust. Although unclear in Section __.5(f), the Commentary indicates that these horizontal interests must be issued in connection with each series of the revolving master trust. SAFs do not currently issue or create specific equity interests for each series. Instead, as described above, the Trust Equity Interest supports all series, increasing as new series are issued and new SARs are added. Therefore, we request that the Agencies make it clear that, for revolving master trusts, separate equity interests do not need to be created for each series and a Trust Equity Interest that supports all series will qualify as a risk retention option for revolving master trusts.

In addition, as noted above, servicer advances do not accrue interest. As a result, SAFs do not, as required by §__.5(f)(2), distinguish "between the series' share of the interest and fee cash flows and the series' share of the principal repayment cash flows from the securitized assets collateralizing the revolving master trust" because there are no "interest and fee cash flows". However, SAFs do allocate principal (SAR) collections proportionately among series. We therefore urge the Agencies to revise the requirements of §__.5(f)(2) to permit revolving master trusts that distinguish between each series' share of collections, but that do not have separate interest and principal collection allocations, to use the special horizontal interest.

As noted above, SAFs often have cash reserve accounts available to pay accrued interest on the notes if the monthly collections on the underlying SARs are insufficient to pay such interest in a given month. These cash reserve accounts are also available to pay any losses on the notes if there is ever an event of default under the SAF. However, prior to an event of default, amounts in the cash reserve accounts are only used to cover interest shortfalls on the notes in the related series; therefore, these reserve accounts do not meet the requirement in the Reproposed Rules that "[a]mounts in the account shall be released to satisfy payments on ABS interests in the issuing entity on any payment date on which the issuing entity has insufficient funds from any source to satisfy an[y] amount due on any ABS interest". Because these cash reserve accounts perform loss-absorbing functions for their related series, and cash reserve accounts are permitted to offset on a dollar-for-dollar basis the amount of an eligible horizontal residual interest (§__.4(c)), we urge the agencies to adopt a risk retention rule permitting SAFs structured as revolving master trusts to satisfy or offset the sponsor's risk retention requirement on a dollar-

for-dollar basis to the extent of any cash reserve account that otherwise satisfies the requirements of §__.4(c).

The Commentary to the Re-Proposal states that if the Agencies were to permit a subordinated interest to satisfy the risk retention requirements for a revolving master trust, the Agencies are considering requiring such interests to be counted based upon fair value, rather than face value, as permitted in the case of a "seller's interest". The Agencies elaborate in the Commentary that they consider the approach of basing the "seller's interest" on face value to be "sufficiently conservative, because sponsors of revolving master trusts do not include senior interest only bonds or premium bonds in their ABS structures" and that if that "were not the case, it would be more appropriate to require the minimum seller's interest requirement to be included based on the fair value basis".

As described above, the Trust Equity Interest must always equal or exceed the required level of over-collateralization mandated for each series of notes. This level is maintained on a continuous basis through application of collections under the payment waterfall and reductions in the cash prices paid by the issuing entity to purchase additional SARs. In addition, if the actual timing of recoveries of SARs is slower than the assumptions used to establish the advance rates applied to the SARs (or other "performance" tests are failed), the size of the Trust Equity Interest must be increased (through payments to the notes or the addition of more SARs). These tests, as well as the amount of over-collateralization, are measured at least monthly. However, it would not be appropriate (or practical) to require the sponsor to evaluate the market value of the Trust Equity Interest on an ongoing basis. While the Trust Equity Interest must always meet the required over-collateralization level, its market value, and that of the notes issued by the revolving master trust, will certainly vary over time due to market factors (such as interest rates) completely unrelated to the credit support intended to be provided by the Trust Equity Interest. Consequently, we request that the Trust Equity Interest and, to the extent a SAF includes any series-specific cash reserve account that otherwise satisfy the requirements of §__.4(c), be valued based on the par amount (face value) of the SARs.

Finally, to the extent that the Agencies are considering applying the Closing Date Projected Cash Flow Rate and Closing Date Projected Principal Payment Rate to the Trust Equity Interest or any other horizontal interest in order to make them eligible for risk retention by sponsors of revolving master trusts, we urge the Agencies to not so apply the Closing Date Projected Cash Flow Rate and Closing Date Projected Principal Payment Rate. Because the Closing Date Projected Cash Flow Rate and Closing Date Projected Principal Payment Rate relate to eligible horizontal residual interests for static pool asset-backed securities, those amounts may be calculable on the related closing date. However, the revolving nature of the asset pool backing the securities issued by revolving master trusts makes the Closing Date Projected Cash Flow Rate and Closing Date Projected Principal Payment Rate impossible to calculate for a revolving master trust. Therefore, we urge the Agencies to not apply either the Closing Date Projected

Cash Flow Rate or the Closing Date Projected Principal Payment Rate to any risk retention option available to revolving master trusts.

We appreciate the opportunity to submit these comments. Please contact Michael Stanton at 561-682-7609 or Michael.Stanton@ocwen.com if you have any questions regarding our comments.

Sincerely,

Ronald M. Faris
CEO and President