August 1, 2011

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
Re: Docket Number OCC-2010-0002

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

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

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

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

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500
Re: RIN 2501-AD53/ 24 CFR Part 267
FR-5504-P-01

Re: Proposed Rules on Credit Risk Retention

Ladies and Gentlemen:

IPFS Corporation ("IPFS"), an originator and servicer of insurance premium finance loans, respectfully submits these comments on the jointly proposed rules for credit risk retention (the "Proposals"). IPFS finances approximately $7.5 billion of insurance premiums for approximately 550,000 customers annually.

IPFS has been a regular issuer in the securitization market since the early 1990s, and continues to rely on commercial paper conduit and privately-placed medium-term note facilities for its financing needs. IPFS operates a revolving master trust facility with a wholly-owned SPV subsidiary that issues variable funding notes ("VFNs", primarily issued to commercial paper conduits) and medium-term notes (in the Rule 144A market) that are all secured by a common pool of amortizing, non-revolving premium finance loans. Several other issuers in our industry have used comparable structures for their securitizations. In the ordinary course of our business, new loans are continually sold to the SPV by IPFS and its operating subsidiaries as they are originated. The amount of debt outstanding can be adjusted through paydowns and new borrowings under the VFNs, with the assets of the trust that aren't required as collateral

constituting our securitization subsidiary's retained interest. Our current master trust structure, which has been in place since 2001, has issued multiple series of highly-rated senior and subordinate notes over the years.

During the time that we have participated in the securitization market, no investor has suffered any loss of expected principal or interest in connection with any of our securitizations. To the best of our knowledge, that's also true of securitizations of other issuers of rated asset-backed securities in the premium finance industry. Furthermore, the normal, historical net loss experience on our underlying loan portfolio has been approximately 25 basis points per year and even during the recent downturn, our loan portfolio's net loss experience has never exceeded 50 basis points per year. During those same periods, our required reserves (i.e., our SPV subsidiary's retained interest) have always been at least 500 basis points, representing several times coverage of our highest annual net loss experience and, coincidentally, the amount of "skin in the game" required by the Dodd-Frank Act.

We believe that certain aspects of the proposed credit retention rules would adversely affect IPFS without any corresponding benefit to investors, to the securitization market, or to the overall economy. We're also concerned that the narrow focus of the Proposals may harm the fragile recovery in the ABS markets that has been championed by various Federal regulators, including the Federal Reserve Board. Contrary to the legislative intent, the Proposals do not adequately "recognize the differences in securitization practices for various asset classes" and will decrease businesses' access to insurance premium financing and increase its cost to those to whom it remains available. Further, the Proposals seem to favor large banks, harming smaller lenders, smaller businesses, and ultimately every American that will be deprived of specialized community lenders.

Before summarizing our concerns, please permit us to supply more background about our company, our industry and our product—insurance premium finance loans.

Background on IPFS's Business—What are Premium Finance Loans?

Operating in a highly regulated environment as licensed premium finance lenders, IPFS and its various wholly-owned state or region-specific subsidiaries make loans primarily to small and medium-sized businesses to finance those businesses' property and casualty insurance premiums. Property and casualty insurance policies for businesses typically require a full, one-year premium to be paid at or near the beginning of the policy period. Paying for large, up-front insurance premiums can be a significant challenge, particularly for small and medium-sized businesses. Premium finance lenders like IPFS enable their customers to meet that challenge by allowing the insurance policyholder to spread payments over the course of the policy rather than paying in full up front. If the policy is later cancelled by the lender for non-payment before the full coverage period has run, the insurance company issues a pro-rated refund (which we call the "return premium") of the "unused" up-front payment to the lender. IPFS uses those potential return premiums (typically payable by highly-rated insurance companies) as the primary collateral for its loans.

Under its premium finance agreements, which are similar to those of other companies in the industry, IPFS has two sources of recourse upon non-payment or other default: the insurance company and the customer. Premium finance loan customers are particularly reluctant to

default, since most businesses need some type of property and casualty insurance to operate. Since a default can lead to the cancellation of the customer's coverage, a decision to default on a premium finance loan can be tantamount to a decision to liquidate the business.[1] If a customer defaults on a loan, IPFS is entitled to cancel the underlying insurance policy, to receive and apply any unearned premium that secures the loan, and to seek any remaining unpaid amount directly from the customer. Because there are two sources of recourse, and because default is relatively rare, premium finance loans are a particularly safe asset class.

In addition to originating their own loans, IPFS and its subsidiaries acquire premium finance loans from other (typically smaller) premium finance companies and financial institutions. IPFS also acquires loans originated by other companies that are exiting the business. For example, IPFS bought the business of AIG's premium finance subsidiary, AI Credit last year. As we explain later in this letter, that taxpayer-friendly acquisition would have been more difficult or perhaps impossible had the Proposals been final rules at the time.

The loans we purchase rather than originate are usually associated with our acquisition of whole businesses, or are part of our ongoing relationships with regular, repeat originators. Any such loans sold to our SPV issuer and included in our master trust must meet the same ongoing quality and concentration limits that apply to the loans we originate.

Please understand that IPFS does not operate an "originate to distribute" shop. We can't originate or buy a loan just to sell it and walk away. Our securitization structure is integral to our overall financing structure, and the loans within our master trust secure all of our SPV issuer's series of notes. If poor quality loans characterized our master trust, it would be more than just a reputational problem for us. It could require us to replace our entire financing structure, and interrupt our ability to meet our regular customers' financing needs.

Most of IPFS's customers are the small businesses that the White House calls "the engines of private sector job growth."[2] Through IPFS and the rest of the premium finance industry, those businesses can get convenient, competitively-priced loans at the same time that they're arranging insurance coverage with their independent insurance brokers. The loans are disbursed quickly, without the need for SBA support or for the customer to pledge other business assets as collateral. Because of the small average loan size (approximately 83% of our customers finance premiums less than $5,000, and over 90% of our customers finance premiums less than $10,000), and the specialized nature of the return premiums as collateral, many commercial banks choose not to make premium finance loans. The premium finance industry, including IPFS, fills that gap by providing critical financing for American businesses. The Federal Reserve Board recognized that critical role by including premium finance loans (along with a handful of other particularly safe and important asset classes) in its successful Term Asset-Backed Securities Loan Facility ("TALF") program, noting that:

---

[1] The decision to cancel a customer's insurance coverage is a significant one, which is why IPFS, its originating subsidiaries, and other premium finance lenders are regulated in most states.

[2] Press Release, Office of the Press Secretary, The White House, *FACT SHEET: President Obama to Meet with Small Business Owners, Urge Congress to Act to Support Small Businesses and Create Jobs* (July 27, 2010), *available at* http://www.whitehouse.gov/the-press-office/fact-sheet-president-obama-meet-with-small-business-owners-urge-congress-act-suppor.

More than 1.5 million insurance premium finance loans are extended to small businesses each year so they can obtain property and casualty insurance. The loans are often funded through the asset-backed securities (ABS) market and have become more expensive and more difficult to obtain since the shutdown of that market last fall. The inclusion of insurance premium ABS as TALF-eligible collateral will facilitate the flow of credit to small businesses.[3]

The need for Federal government protection and encouragement of this type of financing can't be overstated. Last year, President Obama said: "Everywhere I go, I hear from small business owners who simply cannot get the credit they need to hire and expand."[4] In the same speech, he also said that "government can't guarantee success, but it can knock down barriers that keep entrepreneurs from opening or expanding. For example, the lack of affordable credit—that's something the government can do something about."[5] During National Small Business Week, President Obama's administration focused on seven critical areas for small businesses, two of which – more access to capital, and more exporting support and opportunities[6] – are harmed by the Proposals.

To avoid creating a new barrier to the availability of affordable credit, the Proposals should be broadened to permit sponsors to retain risk through their equity in wholly-owned issuers, to expand the definition of originator, to include master trust structures like ours and to include commercial loans like our premium finance loans.[7]

IPFS has always had "skin in the game" above the Proposals' and Dodd-Frank's required levels, but in a form that is not included in the Proposals. Furthermore, we have always originated commercial loans (our premium finance loans) that are as strong or stronger from a credit perspective than the commercial loans that the Proposals would exempt from risk retention requirements. We ask you to broaden the Proposals to permit us to continue using the robust structures and underwriting criteria that we currently use. Specifically, we would like the Agencies to:

(i) permit sponsors to retain risk through their equity in wholly-owned issuers,

(ii) expand the definition of "originators" so that ABCP conduits can finance (without duplicative risk retention requirements) transactions with more than one originator and with assets purchased from other originators,

(iii) broaden how "master trust" is defined, and

---

[3] Press Release, Board of Governors of the Federal Reserve System, *Federal Reserve Announces Expansion of Eligible Collateral Under Term Asset-Backed Securities Loan Facility* (May 1, 2009), *available at* http://www.federalreserve.gov/newsevents/press/monetary/20090501a.htm.

[4] Speeches & Remarks, Office of the Press Secretary, The White House, *Remarks by the President on Small Business Jobs Initiatives* (July 28, 2010).

[5] *Id.*

[6] Press Release, Office of the Press Secretary, The White House, *FACT SHEET: The Small Business Agenda: Growing America's Small Businesses to Win the Future* (May 16, 2011), *available at* *http://www.whitehouse.gov/the-press-office/2011/05/16/white-house-releases-small-business-agenda-growing-americas-small-busine*.

[7] This section addresses Questions 13, 14, 16 and 18.

(iv) expand the exemption for commercial loans to include premium finance loans.

Please see our detailed, point-by-point comments below.

1. The Proposals unnecessarily prevent "issuers" from being "securitizers". The master trust structure in which sponsors retain risk through their equity investment in wholly-owned issuers is a time-tested, bankruptcy-remote structure that offers robust protection to investors while keeping sponsor "skin in the game".[8]

Section 15G of the Exchange Act requires the banking agencies and the SEC to prescribe rules imposing credit retention requirements on "securitizers". As used in the statute, the term "securitizer" means an issuer or one who organizes an asset backed transaction ("sponsor"). Under the statute, IPFS's wholly-owned SPV is considered the issuer and IPFS is considered the sponsor. However, the Proposals limit the term "securitizer" to sponsors and depositors, thus omitting issuers such as our SPV from the range of entities that can satisfy the risk retention requirement.

In IPFS's securitization, as in other premium finance loan and trade receivables securitizations, the investors and rating agencies already require the SPV to retain more credit risk than the Proposals' required amount. Unlike originators who originate and sell loans to unaffiliated entities, affiliated originators under common control with the issuing SPV often support their originations by absorbing portfolio losses indirectly through their equity investments in the SPV. Sponsors in structures like ours are not trying to hide from risk by absorbing it only indirectly through their equity interest, but are conforming to the normal bankruptcy-remote structuring tenets that the market and the rating agencies have required since the 1980s. Originators' direct exposure to the performance of sold assets adversely affects the "true sale" analysis that is at the heart of removing the underlying securitized assets from the originators' bankruptcy estates. By contrast, indirectly retaining risk via ownership of the SPV is an accepted way for sponsors to meet the basic structuring requirements of safe securitization transactions. Indeed, that approach is used not only in master trust structures like ours, but in many other securitization structures funded by commercial paper conduits that buy notes or undivided interests in the underlying assets from SPVs.

The Proposals' failure to give credit for such issuer-level retained interests would require IPFS to restructure its existing, high-performing facilities merely to substitute one form of risk retention for another. Even if a different form of risk retention can satisfy the bankruptcy-remote structuring requirements, we would certainly be exposed to increased legal expenses as our counsel and counsel for arrangers, investors, and rating agencies examine and debate new forms of "true sale" and substantive consolidation opinions. The same would be true of changes to the descriptions of our transaction structure in our offering documents. Those increased costs would likely make premium finance loans more expensive to our customers, while changing the protections that our investors crafted themselves.

---

[8] This section addresses Questions 17, 19, 22, and 23.

We believe that our existing risk retention structure fully satisfies Dodd-Frank's intended "skin-in-the-game" requirements, and respectfully request that it be included among the "horizontal slice" alternatives in any rules that spring from the Proposals.

2. The Proposals will limit available financing by defining the term "originator" too narrowly. Expanding ways that affiliates can pool required retained risk would protect reasonably-priced financing options for American small businesses.[9]

The Proposals' "originator" definition unnecessarily adds administrative burdens and limits issuers and originators. The definitions of "originator" and "originator-seller" are based on the Act's Section 15G, which defines the term "originator" as one who, by the extension of credit, creates a financial asset. The Proposals effectively take this one step further, and limit the activities of "eligible ABCP" conduits by permitting them to purchase only interests issued by an SPV that are collateralized by assets originated by a single originator. It does not appear that assets acquired by an originator from other originators can be used, or that affiliated originators can use the same SPV. In this regard, Note 79 to the proposing release states that "an originator-seller would mean an entity that creates assets through one or more extensions of credit and sells those assets (and not other assets) to an intermediate SPV". Both of these exclusions adversely affect IPFS without any obvious benefits to investors.

Had the Proposals been in effect last year, it would have been difficult or impossible for IPFS to finance its 2010 acquisition of AIG's insurance premium finance business, which spared American taxpayers from a costly bailout and kept credit available for thousands of businesses. In that acquisition, IPFS and its originator subsidiaries bought approximately $1.4 billion in premium finance loans from AIG's subsidiaries and seamlessly blended the loans into IPFS's existing securitization structure. Our investors and the rating agencies still had to evaluate those loans, but the fact that they weren't originally generated by IPFS was largely irrelevant because they met customary industry criteria. No regulatory structure forced our investors to reject the loans merely because they weren't originated by IPFS. Had the Proposals been in effect, our ABCP conduit investors couldn't have financed our acquisition without retaining credit risk that we already held.

Similarly, the Proposals will hamper on-going programs through which IPFS acquires loans, originated in accordance with its underwriting standards, from third-party originators. This, in turn, could lead to financing difficulties for smaller premium finance companies, who, unable to cope with the current complexities in the securitization market, focus on front-end regulations and relationships with small businesses and rely on selling those loans to companies – like IPFS – who have invested in relationships with capital markets and the regulatory expertise related to accessing those markets. Because of the Proposals' requirement that an SPV's assets be collateralized solely by assets of a single originator seller, IPFS and those smaller premium finance companies would each be required to either create separate SPVs and presumably separate financings for itself and each of its subsidiaries, or to obtain financing (if it could) only from ABCP conduits that were not eligible conduits and subject to retaining additional risk above the sponsor's retained 5%. Either alternative would increase IPFS's borrowing costs without benefiting investors. Those borrowing costs likely would also be

[9] This section addresses Questions 1, 3, 4, 5, 7, 8, 9, 59, 60, and 62.

increased because the market would regard the smaller pools held by single-seller SPVs as riskier. If originators (or, as suggested above, the SPV) retain the appropriate level of risk, requiring the SPV to be collateralized by assets of a single originator seems an added cost to borrowers unaccompanied by added investor protection.

In addition to our need to securitize purchased loans through ABCP conduits without paying for duplicative risk retention by the conduits, we need to continue originating loans through subsidiaries to meet certain regulatory requirements. For example, California law requires any premium finance company licensed in California to be incorporated in that state. As a result, premium finance companies with coast-to-coast reach typically have at least one subsidiary and require financing for both the parent and the subsidiary. IPFS has a California subsidiary, other subsidiaries focusing on particular geographic regions, and subsidiaries that continue earlier businesses acquired by IPFS.

We don't believe that any "skin in the game" concern should lead to a single-originator-only requirement. IPFS's structure, like many in its industry, is a multi-originator, single SPV structure in which affiliated originators sell comparable assets to IPFS's wholly-owned SPV, which in turn issues notes to investors (including ABCP conduits). Similarly, trade receivables securitizations are often structured as multi-originator. It is common for corporate families to be separated into different companies serving different market niches. Even if those companies are in different industries, they can often generate equally creditworthy trade receivables and finance them through a unified, multi-originator trade receivables securitization. The Proposals would impede ABCP conduits' current ability to finance those assets cost-effectively.

Please expand "originators" to include affiliated originators, and revise Subpart B, Section _.9 to include assets purchased by those originators that are comparable to assets they or their affiliates originate themselves. Reputation and business risk alone keep most securitizers' credit standards high and their securitizations performing for investors. Securitizers like IPFS have structured their programs to align their interests with their investors' interests, recognizing that such alignment best serves their business. Please remember that master trust securitizations, like those of IPFS and many credit card sponsors, protected their investors' returns during the crisis without a government-mandated retention requirement or a limit on third-party asset purchases.

3. Master trusts encompass more assets and more stable methods of issuing than merely the "revolving asset master trusts" contemplated by the Proposals.[10]

Under the Proposals, the only master trust structure contemplated is a "Revolving asset master trust", in which the underlying assets change over time and constitute revolving accounts (such as credit card accounts). Although a master trust collateral pool retains stringent credit requirements for entering assets, and may make repeated term loans to borrowers, it might not contain revolving assets. IPFS has been safely using master trusts for its non-revolving premium finance loans for many years. Requiring master trusts to contain only revolving assets withholds securitization efficiencies from entire industries. For example, companies in many different industries have used master trusts for trade receivables securitizations, even though a trade

[10] This section addresses Questions 41 and 42.

receivable is unlikely to have arisen under a revolving account (i.e., a trade receivable is more like a term loan than a revolving credit card account). Similarly, small business borrowers who rely on insurance premium finance loans will struggle to find economical secured financing if their loan accounts must be financed outside a master trust structure, or will only be able to obtain such financing from premium finance companies owned by big commercial banks who don't rely on securitization for financing.

Nothing in the Act limits master trust structures to those securitizing revolving assets. Further, in the Board's October 2010 Report to the Congress on Risk Retention, the Board recognizes that "smaller-volume types of securitizations share many features" with the larger securitization types, and cites similarities between insurance premium finance loan securitizations and credit card securitizations.[11] Using a master trust definition that includes trusts containing more types of highly credit-worthy assets seems consistent with that observation and with one of the Board's recommendations for these Proposals: that the Agencies "[c]onsider the potential effect of credit risk retention requirements on the capacity of smaller market participants to comply and remain active in the securitization market."[12] The Board's observation that widespread defaults "were largely concentrated in ABS backed by real estate"[13], and recognition that credit card securitizers did what they needed to do to support their master trusts,[14] is supported by IPFS's experience during the financial crisis. IPFS's master trust made all payments expected by its investors, without any unscheduled or extraordinary support from IPFS. Please revise Subpart A, Section _.2's definition of "Revolving asset master trust" to permit master trusts holding assets that don't revolve to qualify as master trusts.

4. If other commercial loans can be exempt largely because of their standardization, then consistently performing, conservatively secured loans like insurance premium loans should also be exempt.[15]

IPFS's insurance premium finance loans are primarily secured "commercial loans" as defined in Subpart D, Section _.16. IPFS and its affiliates make secured loans to companies or individuals primarily for business purposes. Subpart D, Section _.18's specificity about credit-worthiness metrics and assurances, however, would prevent insurance premium loans and other specialized small business financings from meeting Subpart D, Section _.17's exemption. Indeed, many aspects of Section _.18 seem aimed at preventing small or new businesses from accessing business credit. Section _.18(b)(1)(i)(B)(ii), (iii), and (iv), for example, could prevent many small business start-ups from receiving specialized loans at competitive rates – including insurance premium finance loans – because they conflate repayment sources with borrowers'

---

[11] Board of Governors of the Federal Reserve System, *Report to the Congress on Risk Retention*, October 2010, page 8.

[12] Board of Governors of the Federal Reserve System, *Report to the Congress on Risk Retention*, October 2010, page 3.

[13] Board of Governors of the Federal Reserve System, *Report to the Congress on Risk Retention*, October 2010, page 2.

[14] Board of Governors of the Federal Reserve System, *Report to the Congress on Risk Retention*, October 2010, page 45.

[15] This section applies to Questions 12, 153, 154, 155, 168, and 173.

overall financial state. Further, the commercial loan documentation required by Section _.18(b)(2)(ii),(iii), and (iv) could prevent small businesses from the pricing advantages of specialized loans, like insurance premium finance loans, without increasing investors' safety.

As noted in the earlier description of our business, insurance premium finance loans are based on and secured by insurance policies that provide strong support for the payment of the loans. Prohibiting payments-in-kind (Section _.18(b)(2)(ii)), imposing limits on the borrower's creation of a security interest on other property (Section _.18(b)(2)(iii)(A)), or requiring the borrower to maintain insurance to protect an insurance policy (Section _.18(b)(2)(iv)(A)), are out-of-market requests for premium financings and certain other specialized types of commercial financing.

As announced by The White House during National Small Business Week, one of the Administration's priorities is to increase access to business capital.[16] Specialized commercial loans like premium finance loans increase small businesses access to capital, and should be encouraged. Please permit high-performing, reliable assets like premium finance loans to be treated like the credit-worthy commercial loans they are by removing the proposed specifics crafted for other types of commercial loans. We ask that the Agencies exempt premium finance loans like IPFS's from the Proposals entirely, or broaden the "commercial loan" exemption so that specialized, conservative financings like IPFS's can qualify.

<u>Conclusion</u>.

We believe that some portions of the Proposals would harm IPFS and comparable sponsors and issuers without any corresponding benefit to investors, the securitization market, or the economy. The Proposals make us fear for the fragile recovery in the ABS markets, and fail to adequately "recognize the differences in securitization practices for various asset classes" while decreasing businesses' access to insurance premium financing and increasing its cost to those businesses for whom it remains available. Further, the Proposals seem to favor large banks that are less reliant on securitization for their financing, while potentially harming smaller lenders and businesses.

We realize that the Agencies' task is difficult. Nevertheless, we urge you to remember that many transaction structures currently in use work well and meet the intended goals of the Dodd-Frank risk retention requirements. Please do your utmost to retain the successful aspects of the existing regulatory regime, while minimizing the cost and disruption of any changes that you deem necessary. If our fundamental comments aren't accepted, we would be grateful for the chance to comment on further developed proposals. We otherwise foresee a great deal of time spent with the Agencies' staffs clarifying how several of the proposals would apply to premium finance loans and to our specific transaction structure.

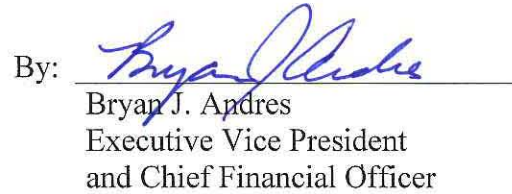
---

[16] Press Release, Office of the Press Secretary, The White House, *FACT SHEET: The Small Business Agenda: Growing America's Small Businesses to Win the Future* (May 16, 2011), *available at* *http://www.whitehouse.gov/the-press-office/2011/05/16/white-house-releases-small-business-agenda-growing-americas-small-busine*.

Please contact us with any questions that you might have, or if you wish to discuss this matter further.

Sincerely,

IPFS CORPORATION

By: 

Bryan J. Andres
Executive Vice President
and Chief Financial Officer