Meeting with the Commercial Real Estate Finance Council

On December 12, 2013, FHFA staff met with representatives of the Commercial Real Estate Finance Council (CREFC) to discuss comments made by CREFC in its comment letter on the Proposed Credit Risk Retention Rule.

October 30, 2013

The Honorable Ben S. Bernanke
Chairman, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Mary Jo White
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Thomas J. Curry
Comptroller of the Currency
U.S. Department of the Treasury
250 E Street, SW
Washington, DC 20219

The Honorable Jacob J. Lew
Secretary
United States Department of the Treasury, and
Chairman, Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Proposed Rule, Credit Risk Retention
OCC Docket No. 2013-0010; Federal Reserve Docket No. R-1411; FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-AA43

Ladies and Gentlemen:

The Commercial Real Estate Finance Council ("CRE Finance Council" or "CREFC") appreciates the opportunity to comment on the proposed rule for credit risk retention for asset-backed securities,[1] which was jointly published by your respective agencies (collectively, the "Agencies")

[1] Proposed Rule, Credit Risk Retention, 78 Fed. Reg. 57928 (Sept. 20, 2013) (hereafter, "NPR" or "Proposed Rule").

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pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] This proposed rule follows the prior proposed rule of 2011.[3]

The CRE Finance Council is the collective voice of the entire $3.1 trillion commercial real estate finance market. Its members include all of the significant portfolio, multifamily, and commercial mortgage-backed securities ("CMBS") lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds, specialty finance companies, REITs and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.[4] Our industry plays a critical role in the financing of office buildings, industrial complexes, multifamily housing, retail facilities, hotels, and other types of commercial real estate that help form the backbone of the American economy.

Our principal functions include setting market standards, facilitating the free and open flow of market information, and education at all levels. Securitization is one of the essential processes for the delivery of capital necessary for the growth and success of commercial real estate markets. One of our core missions is to foster the efficient and sustainable operation of CMBS. To this end, we have worked closely with policymakers to educate and inform legislative and regulatory actions to help optimize market standards and regulations.

Considering the important role that commercial real estate plays in the economy and the critical function that securitization serves in commercial real estate, we must emphasize at the outset that the stakes in this rulemaking process are very high. Indeed, the CMBS market suffered a traumatic disruption due to the financial crisis in 2007-2009. Volume fell from an all-time high of $229 billion in 2007 to a low of just $3 billion in 2009. The recent recovery in new CMBS issuance and trading values for vintage CMBS is not the result of investor amnesia or apathy, but the product of an industry-wide process of self-assessment, restructuring and implementation of materially enhanced standards.

A few examples as a result: Loan-to-Value ratios have dropped from 2005-2007 levels; credit support across all bond classes from AAA down to BBB- has risen materially; and appraisal reductions are now accounted for in determining controlling class rights. As discussed in more detail below and in Appendix 1, the CRE Finance Council spearheaded industry efforts to bolster underwriting, disclosure, accountability and transparency for investors, resulting in greater confidence and increased demand for CMBS.

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[2] Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), Pub. L. No. 111-203, §941(b), 124 Stat. 1376, 1896 (2010) (creating Securities Exchange Act § 15G (i)(2)).

[3] Proposed Rule, Credit Risk Retention, 76 Fed. Reg. 24090 (Apr. 29, 2011) (hereafter, "Prior NPR" or "Prior Proposed Rule").

[4] A complete CRE Finance Council Membership list is attached at Appendix 12.

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An important feature of the domestic CRE market is its diversity of financing sources. Representing roughly 20 percent of outstanding CRE financings as of September 30, 2013,[5] non-Agency CMBS provides liquidity to a comprehensive range of property sizes, types and geographies. Conduits fund stabilized properties in tier I markets, but they also fill gaps by lending in other markets, as well. Within the Single Asset Single Borrower segment, CMBS can access a wide investor base capable of financing transactions that can be too large for balance sheet lenders. CMBS is a significant source of financing, a competitive lender and one that fills certain gaps.

CMBS is an integral component of CRE lending – and therefore supports the overall health of the economy as a whole – by adding access to capital and diversification to the lender and investor base beyond what portfolio – or balance sheet – lending can contribute on its own to the sector. CMBS accomplishes this in part by allowing for the efficient tailoring of investment risk and yield requirements to the specific goals and desires of the entire range of potential institutional investors. If the regulatory regime results in limiting a vibrant CMBS market, the liquidity of insured depositories and other regulated institutions would be reduced unnecessarily and, in all likelihood and at the same time, real estate risk would shift from the capital markets and become more concentrated on bank and life insurance company balance sheets. Failure to achieve a balanced and workable set of risk retention rules thus could be counterproductive and could significantly restrict the overall amount of capital that is available in the commercial real estate finance market, leading to increased costs for CRE borrowers and, ultimately, may be a drag on the economy and job growth.

We also urge the Agencies to bear in mind that these risk retention rules must not be developed in isolation. As the Federal Reserve Board cautioned in its recommendations to Congress on risk retention, the totality of the regulatory changes that are being put into motion – including the various new disclosure and credit rating agency reform provisions included in the Act, the securitization accounting changes that must be effectuated, the new Basel capital requirements regime, and European Union Solvency II risk retention requirements – should be considered to develop a rational overall framework for appropriate alignment of risk:

> [R]ulemakings in other areas could affect securitization in a manner that should be considered in the design of credit risk retention requirements. Retention requirements that would, if imposed in isolation, have modest effects on the provision of credit through securitization channels could, in combination with other regulatory initiatives, significantly impede the availability of financing. In other instances, rulemakings under distinct

[5] *See* http://www.sifma.org/research/statistics.aspx.

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> sections of the Act might more efficiently address the same objectives as credit risk retention requirements.[6]

The CRE Finance Council and its members believe that the basic retention regime outlined in the Proposed Rule can be the basis for a viable set of retention rules within the overall regulatory framework. We recognize that extraordinary thought and work went into the development of the Proposed Rule, and we particularly appreciate the Agencies' efforts to craft provisions that seek to address the unique characteristics of the CMBS market and that incorporate many of the suggestions made in the comment letter we submitted on the initial proposal on July 18, 2011 ("Prior Comment Letter.").

In promulgating the Proposed Rule, the Agencies made clear that they are attempting "to minimize the potential for the proposed rule to negatively affect the availability and costs of credit to consumers and businesses."[7] The CMBS retention rules – as currently proposed – appear to impose a cost on borrowers that is projected to be from 40 to 50 basis points for conduit transactions,[8] if issuers and sponsors apply rigorous risk-based pricing to the retained interests. This marginal cost translates into an increased cost burden on commercial property owners of 8 to 10 percent at current market borrowing rates of approximately 5-percent.

In the CMBS space, the Agencies also made clear that they are endeavoring "to balance two overriding goals: (1) not disrupting the existing CMBS third-party purchaser structure, and (2) ensuring that risk retention promotes good underwriting."[9] The comments set forth below are intended to build on and improve the Proposed Rule to ensure that it does achieve the appropriate balance in the CMBS space by minimizing unnecessary borrower costs and by better preserving existing CMBS third-party purchaser structures without undermining the underwriting integrity risk retention it is intended to promote.

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[6] Board of Governors of the Federal Reserve System, Report to Congress on Risk Retention (October 2010), at 84 (available at http://federalerserve.gov/boarddocs/rtpcongress/ securitization/riskretention.pdf).

[7] 78 Fed. Reg. at 57934.

[8] If a bank issuer/sponsor uses its own regulatory capital returns as the basis for pricing the Eligible Horizontal Residual Interest ("EHRI"), it is likely that the institution would start with a minimum return requirement of 12.5 percent (the simple average of tier 1 common capital ratios reported by the six largest US banks at the corporate level in 2012). This equates to a minimum hurdle of approximately 37.5 basis points. The issuer would need to receive an additional margin on top of this corporate-wide return measure, especially given the nature of the credit and liquidity risks inherent in the EHRI. If assuming a 13-15 percent return is required of the EHRI, then the marginal cost to the borrower of risk retention is estimated to be approximately 40-50 basis points.

[9] 78 Fed. Reg. at 57958.

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Under the terms of the Act, the risk retention requirements will not go into effect until two years after publication of final rules for asset-backed securities other than those backed by residential mortgages.[10] The CRE Finance Council respectfully submits the following comments that we believe will both meet the intent of the regulations and provide workable solutions for the CRE finance marketplace. We look forward to continuing to work with the Agencies during the rulemaking process.

INTRODUCTION & EXECUTIVE SUMMARY

The CRE Finance Council shares the Agencies' goals of promoting sound underwriting while at the same time preserving the basic CMBS market structure that has been successful and resilient over time, and to do so in a way that minimizes the negative impact on the cost and the availability of credit. During the legislative debates and when the CRE Finance Council first had the opportunity to comment on the Prior Proposed Rule in 2011, we embraced the core risk retention construct and our efforts were focused on ensuring that the details of the proposed risk retention rules worked for CMBS structures.

Since the crisis, CMBS market participants also have sought to improve industry practices outside of the formal regulatory rulemaking process. As part of its core mission, the CRE Finance Council works closely with its members, including the largest principal CMBS issuers, B-Piece Buyers and servicers, and the leading investors in CMBS and portfolio CRE loans, to establish best practices. In response to the crisis, CRE Finance Council members developed and enhanced several sets of documentation and best practices standards, which materially add to market transparency, standardization and efficiency including:

(1) Model Representations and Warranties;
(2) Underwriting Principles;
(3) Refinements of Annex A;
(4) New Loan Modification, and Loan and REO Liquidation Reports; and
(4) Version 7.0 of the CREFC Investor Reporting Package ("IRP")™ for ongoing disclosures and surveillance by investors

all of which we previously have shared with the Agencies and the Department of the Treasury. The CRE Finance Council also has been actively engaged in an initiative to standardize certain basic terms of CMBS Pooling and Servicing Agreements ("PSAs"), as consistency in these terms across transactions will serve as an added transparency enhancement. We intend to modify the model PSAs to incorporate the Proposed Rule requirements when they are finalized to the extent that is

[10] *See* The Act at §941(b), 124 Stat. at 1896.

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appropriate.[11] We believe that increased transparency, standardization and efficiency also should collectively improve underwriting integrity and these improvements thus are designed to advance investor interests and implement one of the core objectives of the Act.

Similarly, the CRE Finance Council worked with its members to build a broad consensus on the changes we collectively believe are necessary to ensure that the Proposed Rule achieves the Agencies' objectives – interest balancing, risk mitigation and minimizing market impact. The CRE Finance Council operates member forums that are organized around each of our core market constituencies: Investment-Grade Investors; B-Piece Investors; Issuers; Servicers; High Yield Investors; and Portfolio Lenders. Each forum engaged in an extended set of discussions to gather feedback and to propose modifications to the Proposed Rule. The discussions were supplemented by a set of targeted surveys that were sent only to the members of the Investment-Grade Investor forum because its membership is large, diffuse, and purchases the largest segment of CMBS new issue bonds.[12] That process was overseen and moderated by the CRE Finance Council's Policy Committee, which is comprised of the leaders of each of the forums and certain members of CRE Finance Council's Executive Committee.

What emerged from these discussions was a strong consensus across all CRE Finance Council constituencies in support of the suggested modifications to the Proposed Rule outlined below. These modifications are all designed to support (rather than displace) the proposed risk retention framework in the CMBS space, and to better ensure that this framework more fully satisfies both the Agencies' and the Act's objectives. Given our broad and diverse membership, unanimity is rarely achievable. Nonetheless, all of the suggested modifications have, at a minimum, the majority support of each of CREFC's member constituencies. In some cases, the support is unanimous. In instances in which there was a range of opinions above a threshold majority, we have defined the range of recommended modifications. The CRE Finance Council's recommendations seek to provide practical solutions for the CMBS marketplace while meeting the goals of the proposed risk retention structure.

The following summary of our core suggestions also serves as a table of contents of our Rule Analysis & Proposed Recommendations; all **bolded and underlined** titles and letter section references

[11] A more detailed summary of these efforts is attached as Appendix 1.

[12] The CREFC surveys were conducted throughout October 2013 as part of CREFC's Proposed Rule deliberations. CREFC staff and the leadership of the IG Investor Forum crafted and approved background information and each question. All surveys were sent to the entire CREFC IG Investor Forum (which formally is called the CREFC "IG Bondholders Forum") and to any other CREFC members who were identified as "IG Investors" in CREFC's member database. Respondents include investors from large life companies, banks, mutual funds, pension funds and private investors, among others. There are 61 company members of the Forum; we show response rates in conjunction with the different survey results referenced below. A copy of the survey and tabulated results also is included as Appendix 11.

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below and throughout the letter also function as hyperlinks if you are viewing these materials electronically:

- **A Meaningful Closing Date Cash Flow Test (Part A.2; Page 12):** As currently proposed, CMBS B-piece retention investments always will fail the requisite Closing Date Projected Cash Flow Rate/Projected Principal Repayment Rate test for two reasons:

  (1) The vast majority of the loans included in CMBS pools (and of all commercial real estate loans whether securitized or not) have no- or low-amortization, prepayment lockout, yield maintenance and/or defeasance structures that result in very low principal repayment rates prior to maturity; and

  (2) B-Piece Buyers obtain their bond positions at a significant discount from par value (because they are in the horizontal first-loss position). As such, the Closing Date Projected Cash Flow Rate (which is based upon the fair value of the "Eligible Horizontal Residual Interest" ("EHRI")) will de facto always be higher than the Closing Date Projected Principal Repayment Rate starting on Day 1.

  For the calculation to work in the CMBS context, it should be rewritten to ensure that (1) the B-Piece Buyer's cash flow as a percentage of the B-Piece Buyer's notional Unpaid Principal Balance ("UPB") will not exceed (2) the cash flow received by the remaining ABS interests as a percentage of their notional UPB. This formulation is consistent with the objective of ensuring that the EHRI does not receive more than its pro rata share of total cash flows from the securitization trust. All CRE Finance Council constituencies unanimously support this recommendation; if the calculation is not modified at least for CMBS/B-Piece Buyer retention, it will completely undermine the viability of CMBS B-Piece retention.

- **Single Borrower/Single Credit Exemption[13] (Part B.1; Page 13):** Single borrower/single credit ("SBSC") deals involve only one loan (or a pool of cross-collateralized loans that essentially function as one loan). Historically, there has been no role for B-Piece Buyers in SBSC transactions; transparency is extremely high because granular loan details are reported to potential investors; and their loss

[13] Re-named from the Proposed Rule's term, "single asset single borrower". The CRE Finance Council definition is intended to exclude an extremely small subset of slightly riskier transactions that technically involve more than one borrower. Also, this definition is intended to include pools of multiple loans only when all loans are cross collateralized.

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experience has been exceedingly low – well below that of conduit CMBS and other asset classes – and has been more on par with non-securitized corporate bonds. Furthermore, because these transactions effectively contain only one loan, it is much easier for investors to evaluate the credit of the transaction before investing. There is a strong consensus among all CRE Finance Council members – including a majority consensus among the Investment-Grade Investors ("IG Investors") whom the retention rules are designed to protect – that these SBSC deals do not present the issues that the Proposed Rule is intended to address and therefore should be completely exempt from the risk retention rules.

- **Modified Definition and Parameters for QCRE** **(Part B.2; Page 16):** To ensure that the qualified commercial loan exemption is an effective mechanism that can be used in the CMBS market, there is broad consensus among CRE Finance Council members – including IG Investors – that the QCRE loan requirements be modified to:

  (a) remove maturity term restrictions (in place of the minimum 10-year term requirement);

  (b) allow for 30-year instead of 25-year amortization schedules;

  (c) allow interest-only loans with a loan-to-value ("LTV") ratio of 50 percent or less to qualify as QCRE loans;

  (d) remove the lower LTV cap for loans that were appraised utilizing a lower capitalization rate.

  The historical loss performance for 5 and 7-year loans and interest-only loans actually is better than for 10-year loans and we can identify no rational basis for excluding the shorter-term or interest-only loans. Similarly, we can identify no supportable basis for requiring a 25-year amortization schedule for most QCRE loans. Importantly, both the shorter QCRE loan restrictions and an expedited amortization schedule will have the unintended result of driving the highest quality CMBS loans out of the CMBS market, thereby effectively weakening the overall CMBS loan pool and unnecessarily raising borrowing costs for all CMBS borrowers. The cumulative loss data bears this out historically because – in the aggregate – the cumulative loss experience for loans that satisfy the proposed CREFC QCRE loan parameters is lower than the cumulative loss experience under the parameters as proposed by the Agencies.

  This same logic also applies to loans that would be excluded by the lower LTV cap restriction when a property is appraised with a lower capitalization rate. Extensive

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industry analysis bears out the concern that this will result in the exclusion of loans secured by the best properties from CMBS pools because it is those properties that qualify for the lower cap rate treatment.

- **Senior/Subordinate Structure for B-Piece Retention** **(Part C.1; Page 21):** The Proposed Rule allows a third-party purchaser (or B-Piece Investor or B-Piece Buyer) to own the EHRI as the requisite CMBS retention and it allows that EHRI investment to be purchased by one or two such third-party buyers. If there are two buyers, however, the Proposed Rule requires that they must hold their positions on a *pari passu* basis. Basing the retention obligation on 5-percent of the fair value of a deal rather than 5-percent of the credit risk of the deal almost doubles the amount of retention for CMBS and the "thickness" of the traditional B-Piece investment and, in many cases, will require retention of investment-grade securities. Allowing two buyers to share the retention obligation is helpful, but the *pari passu* requirement seems to create unintended roadblocks for investors, especially in light of the increased retention obligation. In particular, the requirement of *pari passu* sharing of retention obligations (i) reduces flexibility in that CMBS cannot structure a product that meets B-Piece Investor needs; (ii) dampens the market for B-Piece Buyers who want to target their investment to a particular level of the debt stack, e.g. second loss piece vs. first loss piece; (iii) raises the challenge of assigning control between two unrelated B-Piece Buyers who would consequently have joint control if they are *pari passu* (rather than having tranched control commensurate with their investment as has historically been the case), and may not be able to agree on various control issues that arise throughout the deal causing decision making deadlocks and delay in the servicing of the loans and an impediment to borrowers desiring to obtain various consents; and (iv) needlessly restricts the potential liquidity of these positions even after the mandatory 5- year hold period has expired due to the lack of flexibility.

  To attract B-Piece Investors with sufficient capital and the appropriate capabilities, the EHRI also should be allowed to be held in a senior/subordinate structure, provided that both the senior and subordinate holders satisfy all of the obligations and requirements imposed on B-Piece Buyers to satisfy the CMBS retention requirements and provided further that the subordinate horizontal first-loss position must bear at least one-half of the requisite overall EHRI investment (2.5-percent of the fair value of the deal). Without this flexibility, IG Investors, many of which are unable to own non-investment grade bonds, have expressed concern that they will be locked out of part of their traditional market share. In addition, B-Piece Buyers recognize that their value proposition will be challenged by the need to purchase credits that fall higher in the credit stack. Finally, the senior portion of this proposed senior/subordinate B-Piece structure will be an attractive investment to experienced CRE debt investors whose

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investment return thresholds are lower than for traditional B-piece investors, which can reduce the overall weighted cost of capital of a CMBS transaction and generate lower borrowing costs to commercial property owners. In sum, the *pari passu* requirement reduces both IG and B-Piece Investors' ability to acquire bonds that are consistent with their respective mandates and restrictions (a fundamental benefit of securitization), frustrates formerly obvious lines of control, and creates perverse structuring consequences. For these reasons, CRE Finance Council members overwhelmingly support this recommendation.

- **Appraisal Reduction Amount Calculation for Operating Advisor Consultation Rights (Part C.2; Page 24):** The Proposed Rule requires that Operating Advisor consultation rights attach when the EHRI has a principal balance of 25 percent or less of its initial principal balance. In that regard, CREFC's IG Investors Forum unanimously has proposed that this calculation be based on the formal Appraisal Reduction Amount, i.e. that the Operating Advisor consultation rights attach when the EHRI has an outstanding principal balance, as notionally reduced by any appraisal reductions then allocable to the class or classes (or portions thereof) that constitute the EHRI, that is equal to or less than 25 percent of its initial principal balance. This is current market practice and the CRE Finance Council's members support this recommendation unanimously.

- **Increase in the Voting Quorum to Replace the Special Servicer (Part C.3; Page 24):** CRE Finance Council members agree that the 5-percent quorum required for a vote to replace the special servicer based on an Operating Advisor recommendation is too low. There is strong consensus that this threshold should increase to a quorum requirement of at least 20 percent, with a minimum of at least three investors participating in the vote. In addition, a significant portion of the CREFC membership (not only special servicers) believes that the quorum requirement should be materially higher, closer to two-thirds of total investors. Imposition of this quorum requirement would still be a significant decrease from current market practices. Currently, deal documentation generally specifies that special servicers can be replaced only if a very high percentage of all bondholders (60-75 percent) affirmatively vote for replacement while the B-Piece Buyer remains in control. In the event the B-Piece Buyer is no longer in control, voting thresholds for replacement currently average roughly 50 percent or more of all bondholders.

- **B-Piece Buyer Affiliations (Part C.4; Page 26):** The Proposed Rule prohibits a third-party purchaser of the EHRI from being affiliated with a lender that contributes more than 10 percent of the loans to that deal. Several prominent CMBS B-Piece Buyers have originator affiliates and the prevailing belief among CRE Finance Council

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members is that the strongest deals from an underwriting perspective are those to which a B-Piece Buyer affiliate has contributed a large pool of loans. B-Piece Buyer incentives are perfectly aligned with those of the other investors to those deals. There is no compelling support for precluding B-Piece Buyers from investing in a deal to which its affiliate has contributed more than 10 percent of the loans, especially given the fact that such investments are wholly aligned with the fundamental objectives underlying the risk retention regime.

- **Additional Operating Advisor Disclosure** **(Part C.5, Page 26):** The Proposed Rule requires disclosure of certain information related to the transaction, including details surrounding the Operating Advisor's qualifications. Additionally, the Proposed Rule sets out the goal of Operating Advisor independence. CRE Finance Council members support these provisions, and there is consensus, especially amongst the IG Investors, to require additional disclosures related to the Operating Advisor's material conflict of interest or potential conflict of interest, and related to Operating Advisor compensation.

- **Technical Recommendations** **(Part D; Page 28):** We also have included several recommendations that are more technical in nature but that we believe are necessary to ensure that the Proposed Rules operate as intended.

Where appropriate and as indicated below, the recommendations are supported by formal data analyses. We are happy to provide additional detail on the data analyses that were done and to discuss the analyses to the extent either or both would be helpful to the Agencies.

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PROPOSED RULE ANALYSIS and RECOMMENDATIONS

A. Basic Retention Issues

1. Retention Flexibility & The Elimination of the Premium Cash Capture Reserve Account ("PCCRA")

At the outset, the CRE Finance Council is very supportive of all of the structural flexibility embedded in the Proposed Rule, including clarifying that L-shaped retention can be shared between a sponsor and a third-party purchaser and that the allocation of retention can be executed in any way the bearers of the retained interests choose as long as they collectively satisfy the 5-percent fair value retention obligation. As part of this flexibility, the CRE Finance Council agrees with the Agencies' decision to eliminate the PCCRA. In our prior comment letter, we discussed at length the ineffectiveness of the proposed PCCRA as applied to the CMBS market, and we were pleased to read that the Agencies have removed the requirement from the Proposed Rule.[14]

2. The Payment Date Cash Flow/Principal Repayment Test Must Be Modified

The CRE Finance Council agrees that a cash flow test should be an integral part of the risk retention process. We also support the Agencies' efforts to impose a test that will not seek to disrupt the CMBS market, while, at the same time, being applied to various markets. Most, if not all, CMBS transactions would, however, fail the test as currently proposed.[15]

As illustrated in the spreadsheet attached as Appendix 2, the current proposal is not viable for the CMBS market. As a general matter, in the CMBS market, the EHRI will not receive a disproportionate amount of cash flow relative to its pro rata share of unpaid principal balance ("UPB"). The Proposed Rule's use of fair value in the calculation – as opposed to face value – would prevent B-Piece Buyers from being able to buy the B-Piece at a discount. It is this discount, however, that is essential to holding the EHRI position in the CMBS marketplace; B-Piece Buyers assume that they will absorb some losses. The higher yield the B-Piece Buyers are able to realize is, however, based on this very willingness to absorb losses; this goes to the essence of risk/reward investing in the CMBS marketplace, without which no investor – including no B-Piece Investor – would be willing to accept the greater risk. Additionally, the discount on the subordinate bonds does not prevent the IG Investors from receiving their proportionate share of the cash flows. In order to achieve these objectives, an "apples-to-apples" comparison of cash flows to notional UPB is required.

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[14] *See* 78 Fed. Reg. at 57934.

[15] Proposed Rule § __.4(a), 78 Fed. Reg. at 58026.

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Because all fair-valuation calculations must be disclosed, investors will be informed of the amount the B-Piece Buyer paid for its position; the revised calculation will not disable a typical CMBS B-Piece investment unless there are other streams of investment payments not included in the typical coupon payments and that should be in line with the Agencies' objective in requiring use of the calculation.[16] Failure to modify the formula – or imposition of the requirement that CMBS B-Piece Buyers must comply with the Alternative EHRI Proposal outlined in the rules[17] – would constitute a significant change to the economics of CMBS B-Piece investments, and would therefore jeopardize the viability of the CMBS/B-Piece model completely. This would be counter to the Agencies' expressed intent to adhere to current CMBS market practices as much as possible.[18] The CRE Finance Council's member constituencies unanimously support the recommended formula modifications.

CRE Finance Council Recommendation: The Proposed Rule should adjust the language to reflect that, on any distribution date, the amount of cumulative cash flow received by the EHRI holder as a percentage of face value (determined as of the date of issuance) of the EHRI will not exceed the cumulative amount of cash flow received by the rest of the ABS classes measured as a percentage of the face value (determined as of the date of issuance).

B. QCRE Issues

1. Exempt Single Borrower/Single Credit Deals

By design, the Proposed Rule includes only a very narrow exemption from risk retention for loans that will qualify as "Qualifying Commercial Real Estate" ("QCRE") loans. In the discussion, the Agencies explained that they did not believe that "non-conduit" CMBS transactions warranted any special treatment under the QCRE loan rules or otherwise should qualify for any special exemption;

[16] The Agencies assert that "the purpose of the restriction is to prevent sponsors from structuring a transaction in which the eligible horizontal residual interest is projected to receive such a disproportionate amount of money that the sponsor's interests are no longer aligned with investors' interests." 78 Fed. Reg. at 57939. As long as the B-Piece Investor does not receive more money than its bond ownership – based on par value – would allow, the B-Piece Investor's interests remain aligned with those of other investors in the deal. And – perhaps equally important – the B-Piece deal proceeds are consistent with market expectations of what they should be given the nature of their position in the deal.

[17] *See* 78 Fed. Reg. at 57941.

[18] *See, e.g.,* 78 Fed. Reg. at 58013 (the Agencies "understand[] that the current market practice regarding risk retention in the CMBS market is largely in line with the agencies' proposed rules. The proposed rules allow for the continuation of current risk retention market practice for CMBS in the form of the B-Piece retention with additional modifications to the current practice."); *id.* at 58014 ("To the extent that the proposed rule allows the current market practice to continue with minor change in the size of the horizontal piece, and most market participants follow it, both costs and benefits of the proposed rule are expected to be minimal with the exception of the requirement of the appointment of the independent operating advisor discussed above.")

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although the Agencies acknowledged that "these transactions allow fuller asset-level disclosure in offering documents and could allow prospective investors the opportunity to review each loan in the pool, the agencies do not believe that this fact alone is sufficient grounds to satisfy the exemption standards of section 15G of the Exchange Act."[19]

Single borrower/single credit CMBS ("SBSC") are a specialized sub-set of the "non-conduit" CMBS market and the underlying loans are unique both within the "non-conduit" CMBS space as well as in the broader CMBS market. Over the next 7 years, more than $25 billion of previously issued SBSC bonds are scheduled to mature.[20] SBSC transactions are highly transparent relative to conduit pools. They involve only a single loan to a single borrower or a pool of loans (that may be to several affiliated borrowers) that are all cross-collateralized with one another such that – functionally – they operate as a single loan or "credit." As such, they should qualify for special treatment for several reasons.

First, SBSC deals have proven to be extremely low-risk as they have performed exceptionally well over time by all standards. Over the last sixteen years, cumulative losses across the entire spectrum of SBSC deals have been just 25 basis points or .25 percent.[21] SBSC deals thus have been much safer than the overall conduit CMBS market in which losses have been 2.79 percent over that same period,[22] and than the CMBS loans that would have satisfied the proposed QCRE loan criteria which experienced an aggregate cumulative loss rate of .74 percent over that same period.[23] In comparison, the cumulative loss rate for non-agency Residential Mortgage-Backed Securities loans that would have satisfied the proposed Qualified Mortgage retention exemption provisions over the same period was 6.41 percent.[24]

SBSC performance also compares favorably to corporate debt securities. SBSC transactions performed comparably well in stress periods to corporate bonds over a 31-year period in terms of

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[19] 78 Fed. Reg. at 57976.

[20] See Appendix 3 (showing SBSC and other large loan maturation schedule by year).

[21] *See* Appendix 4 (illustrating same).

[22] *See id.*

[23] *See* Appendix 6 (showing the number of loans to be considered QCRE under the Proposed Rule and the CRE Finance Council recommendations).

[24] JP Morgan provided this calculation.

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ratings transitions.[25] When evaluating loss severity, SBSC deals significantly outperformed even the highest caliber corporate debt segment – first lien loans.[26]

Second, SBSC deals are highly transparent and truly target investors that are looking for exposure to a specific asset. An investment in an SBSC deal generally involves extensive due diligence on one or more related commercial real estate properties that directly or indirectly represent the credit of a single sponsor and are evidenced by a single loan or a group of cross collateralized loans, as compared to a conduit transaction that requires due diligence on commercial real properties that secure as many as 100 or more mortgage loans representing the credit of 100 or more sponsors. Furthermore, SBSC transactions generally are offered only in the private placement market and only to "Qualified Institutional Buyers" under Rule 144A[27] and to "Institutional Accredited Investors" under Section 4(a)(2) of the Securities Act of 1933,[28] which also greatly expands the type and granularity of the data available to prospective investors.[29] This is because an investor in a single exposure necessarily requires extensive diligence and access to information. Accordingly, the level of disclosure included in offering documents and on investor information websites with respect to a SBSC transaction is highly detailed, with much disclosure provided regarding third-party reports, underwriting, reserves, cash management, cash flow analysis, major leases, asset specific risk factors, specifics on all material loan documents, etc. All of these factors mean that investors are in a position to fully evaluate the underwriting of an SBSC transaction and rely far less on the origination and underwriting of the transaction sponsor in making their investment decision.[30]

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[25] *See* Appendix 5 (comparing the SBSC and corporate debt rating transitions).

[26] *See* Appendix 4 (comparing SBSC and corporate debt cumulative loss rates); *compare also* Tad Philipp, et al., "US CMBS: Single-Asset/Single-Borrower Mid-Term Report Card Meets Expectations," Moody's Investors Service, Special Comment (Oct. 21, 2013), *at* https://www.moodys.com/research/US-CMBS-Single-AssetSingle-Borrower-Mid-Term-Report-Card-Meets--PBS_SF345417 (by subscription only); Sharon Ou, et al., "Annual Default Study: Corporate Default and Recovery Rates, 1920-2012," Moody's Investors Service, Special Comment (Feb. 28, 2013), *at* https://www.moodys.com/Pages/GuideToDefaultResearch.aspx (by subscription only).

[27] *See* 17 CFR 230.144A.

[28] *See* Securities Act of 1933 § 4(a)(2), 15 U.S.C. § 77d(2).

[29] In a publicly offered transaction, if any loan-level data is provided to any investor by either the issuer or underwriter, the information will be a free-writing prospectus and generally will need to be filed in accordance with Rule 433 issued under the Securities Act of 1933. *See* 17 C.F.R. § 230.43. Because the filing requirement could conflict directly with privacy law restrictions against public disclosure of borrower personal financial information, and because there also may be confidentiality provisions in the loan documents that prevent public filing of such information, much more limited information is provided to investors in public classes. Loan-level data can, however, be given to prospective investors in privately offered classes and such information need not be filed as a free-writing prospectus.

[30] On this point, one of the only SBSC transactions that incurred losses was the Extended Stay Hotels SBSC transaction of 2007. Reportedly, only a small proportion of the bonds sold and mostly at a steep discount, because

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Third, imposing a retention obligation on SBSC deals is likely to impose an additional cost of credit on potential borrowers. In this very competitive space, this is likely either to cause potential borrowers to flee the market completely[31] or to act as their own issuance sponsor so that they themselves can bear the "retention" obligation directly. Neither of these results is optimal. From a regulatory perspective, borrowing activity will move to a relatively less transparent sector (assuming that risk retention and Regulation AB requirements will be enforced). From the investor perspective, they will either lose quality loans in which to invest or they will lose the integrity that a traditional SBSC bond issuance has evidenced.

It is for these reasons that the CRE Finance Council IG Investor community expressed a strong consensus supporting the blanket exemption for SBSC transactions, with 77.4 percent of the 31 IG Investors responding to the CRE Finance Council survey affirmatively favoring the exemption and another 6.5 percent affirmatively expressing no opinion on exemption; the rest of the impacted CREFC member constituencies – Issuers, B-Piece Buyers, Servicers – unanimously support the exemption.

CRE Finance Council Recommendation: Exempt single borrower/single credit issuances from the risk retention rules. An exempt "Single Borrower/Single Credit" transaction should be defined as "A securitization of a single commercial real estate loan or a group of cross-collateralized commercial real estate loans that represent(s) the obligation of one or more related borrowers, and that is secured, or collectively secured as the case may be, by one or more commercial properties that are directly or indirectly under common ownership or control."

2. The Parameters for QCRE Loans Should Be Modified

As currently drafted, the parameters of the QCRE loan retention exemption are exceedingly restrictive. Since 2003, only 7.71 percent of the CMBS CRE loans would have qualified as QCRE loans under the parameters included in the Proposed Rule and those loans constituted only 3.12 percent of the CMBS loan principal balance over that same time frame.[32] Some CMBS market participants

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investors were able to identify the weaknesses of the deal. *See* Al Yoon & Nancy Leinfuss, "Extended Stay seeks to break up $4.1 billion CMBS," Reuters (June 16, 2009), *at http://www.reuters.com/article/2009/06/16/us-extendedstay-debt-sb-idUSTRE55F72I20090616*.

[31] There is evidence that the CMBS market already is losing some SBSC deals to corporate debt issuances. Harrah's recently refinanced a large loan in the corporate bond market and Hilton is in the process of doing the same. *See, e.g.*, Tim Cross, "Leveraged Loan Issuance Takes Breather As Market Digests Dell, Hilton," Forbes, *at* http://www.forbes.com/sites/spleverage/2013/09/27/leveraged-loan-issuance-takes-breather-as-market-digests-dell-hilton/ (Sept. 27, 2013); Beth Jinks, "Harrah's to Extend $5.5 Billion CMBS Maturities," Bloomberg (March 8, 2010), *at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=adHk3v2GAvgc.

[32] *See* Appendix 6 (showing the number of loans to be considered QCRE under the Proposed Rule and the CRE Finance Council recommendations).

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fear that imposing such restrictive conditions on retention exemptions for CMBS ultimately will result in weaker CMBS loan pools as the higher quality loans gravitate to other markets (which may not have sufficient capacity) because of the higher cost of borrowing that is expected to result from the imposition of the retention obligations. As noted at the outset, CMBS market participants have estimated that the retention obligations ultimately will cost borrowers from 40-50 additional basis points to access CMBS credit. In today's market, this would constitute increased costs of borrowing that ranges from 8 to 10 percent.

In addition to the SBSC exemption supported by all CREFC constituencies, there also is a strong consensus among CREFC members that the following four QCRE loan requirements should be modified:

(1) There should be no QCRE minimum loan term requirement (rather than the 10-year term required under the current proposal);

(2) The requisite amortization schedule should be allowed to be 30 years for all QCRE loans;

(3) Interest-only loans with Loan-to-Value ("LTV") ratios of 50 percent or less should be eligible for the QCRE loan retention exemption; and

(4) The lower allowable LTV ratio cap for loans that were appraised with capitalization ("cap") rates lower than 300 basis points more than current Treasury swap rates should be eliminated.

Each of these parameters is discussed, in turn, below. As a general matter, there is a broad consensus among all of the CRE Finance Council member constituencies in support of these changes to the QCRE loan parameters. This is in part because the cumulative loss percentage for loans that satisfy the CREFC proposed QCRE loan parameters is 0.57 percent compared to a cumulative loss ratio for loans that satisfy the currently proposed QCRE parameters that is almost 50 percent higher or 0.74 percent.[33] Some of CREFC's AAA IG Investors, however, generally oppose any liberalization of the QCRE loan parameters, primarily based on the concern that lenders will underwrite to the parameters to avoid or greatly minimize the required amount of retention.

At the same time, many members – including CREFC's Issuer, B-Piece Buyer and Servicer members, as well as some in the IG Investor community – believe that these recommendations do not go far enough and that the proposed debt service coverage ratio ("DSCR") and the LTV/CLTV ratio

[33] *See id.*

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caps exceed an optimal level. These constituencies argue that a very small percentage of CMBS loans will satisfy these requirements; that the level of these caps does not correlate with loan safety/soundness; and that this all is in stark contrast to the very liberal Qualified Residential Mortgage retention exemption under which the vast majority of residential mortgages will qualify. Although some IG Investors support liberalizing these QCRE loan requirements, others would prefer to further evaluate the appropriate level for these requirements at a later date, if at all.

(a) Loan Terms

The Proposed Rule acknowledges that "many commenters objected to the minimum length and amortization of QCRE loans" in the Prior Proposed Rule.[34] Despite the objections, the Proposed Rule includes a 10-year minimum maturity term for QCRE loans, under the belief that any shorter terms "may create improper underwriting incentives and not create the low-risk CRE loans intended to qualify for the exemption."[35] The Agencies, however, provide no data to support this assumption, and instead rely on the assumption that "an originator may focus only on a short timeframe in evaluating the stability of the CRE underlying the loan in an industry that might be at or near the peak of its business cycle."[36]

A review of the available data makes clear, however, that – historically – loans with 5-year or 7-year maturity terms have, as a class, been safer and better loans than 10-year term loans because losses on those loans have been less severe. Over a 16-year period from 1997 through July, 2013, for example, the cumulative loss rate for 5-year CMBS loans was 2.61 percent; for 7-year CMBS loans was 2.07 percent; and for 10-year CMBS loans was 2.87 percent.[37] For that reason, there was broad consensus across all CREFC constituent groups – including B-Piece Buyers, Issuers IG Investors (75 percent of the IG Investors responding to CREFC's IG Investor survey on this question voted in support) – to exclude a minimum maturity term for the QCRE loan requirements.

CRE Finance Council Recommendation: The definition of QCRE in the Proposed Rule should be modified to remove any minimum maturity term for QCRE loans.

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[34] 78 Fed. Reg. at 57981.

[35] *Id.* at 57982.

[36] *Id.*

[37] *See* Appendix 7 (showing loan performance by term).

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(b) Amortization Schedule

The Proposed Rule had modified the amortization schedule required for QCRE loans from the Prior Proposed Rule by allowing for loans that amortize based on a 30-year amortization schedule for multifamily residential and a 25-year amortization schedule for all other loans. The Agencies maintain that this is an appropriate balance because "a longer amortization period reduces the amount of principal paid on the CRE loan before maturity, which can increase risks related to having to refinance a larger principal amount than would be the case for a CRE loan with a shorter amortization."[38]

A 30-year amortization schedule is the standard amortization schedule for CRE loans in both the securitized and the portfolio markets. Although we appreciate the increase in the allowable amortization period from 20 to 25 years, CRE Finance Council members – across all constituencies, including IG Investors, B-Piece Buyers and Issuers – are concerned that requiring the extra amortization will drive the highest quality borrowers out of the CMBS market, which will weaken CMBS loan pools. In addition, the expedited amortization will have only a negligible impact on the outstanding balance at the end of a 10-year term.

For example, on a $1 million loan at a 4-percent interest rate, the expedited amortization schedule will result in a higher payment of $500 per month, which will result in an overall reduction of the outstanding principal balance at the end of the loan term of only $60,000. CREFC members simply do not believe that the imposition of this requirement will result in better underwriting, but instead will result in a loss of the highest quality loans to other markets. For that reason, there was broad consensus across all CREFC constituent groups – including Issuers, B-Piece Buyers, and IG Investors (with 75 percent of the IG Investors responding to CREFC's IG Investor survey on this question voting in support) – to raise the minimum amortization schedule for non-interest-only loans to a 30-year amortization schedule which is consistent with current market practices.

CRE Finance Council Recommendation: The definition of QCRE in the Proposed Rule should be modified to allow for up to 30-year amortization schedules.

(c) Interest-Only Loans

The Proposed Rule bars interest-only loans from qualifying as QCRE loans. The Agencies state that "interest only loans or interest-only periods are associated with higher credit risk. If a borrower is not required to make any form of principal payment, even with a 25-year amortization

[38] 78 Fed. Reg. at 57981.

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period, it raises questions as to the riskiness of the loan, and would be inappropriate for qualifying CRE loan treatment."[39] The Agencies, however, do not provide any data to support this claim.

Interest-only loans that have a 50 percent or lower LTV ratio should be eligible for QCRE loan status provided that they satisfy the other QCRE loan requirements. A 65 percent LTV amortizing loan should have an LTV at the end of a 10-year term of approximately 55 percent. Allowing interest-only loans that satisfy that lower LTV ratio requirement at the outset should be viewed as the equivalent of an amortizing loan that starts with a higher LTV. From a risk perspective, interest-only CRE loans that had an LTV of 50 percent or less have experienced cumulative losses over the last 16 years of 2.59 percent compared to the cumulative losses of 10-year loans of 2.82 percent.[40] For these reasons, CRE Finance Council's member constituencies, including 73.9 percent of the 23 IG Investors that responded to the CREFC IG Investor survey on this question, all strongly support permitting interest-only loans with an LTV ratio of 50 percent or less to qualify as QCRE loans.

CRE Finance Council Recommendation: The parameters of the QCRE loan requirements in the Proposed Rule should be modified to allow interest-only loans with an LTV ratio of 50 percent or less to qualify.

(d) Capitalization Rate

The Proposed Rule requires that the maximum LTV and CLTV ratios be lowered by 5-percent if the CRE property collateral was appraised with a low capitalization (or "cap") rate that is less than the prevailing 10-year Treasury swap rate plus 300 basis points.[41] In support of this additional limitation, the Agencies assert that "[g]enerally, a low cap rate will inflate the appraised value of the CRE property and thus increase the amount that can be borrowed given a fixed LTV or CLTV."[42] Market experience runs counter to the Agencies' cap rate assumptions as generally the safest loans on the most mature properties in premier markets are appraised with the lower capitalization rates in part in recognition of the stability of those properties.[43] Again, the market concern here is that if the safest CRE loans will be subject to more aggressive LTV and CLTV ratio caps, the result will be the loss of such loans from CMBS loan pools and further erosion in the quality of loan included in CMBS loan pools. For these reasons, there is a strong consensus across all CREFC constituency groups to

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[39] 78 Fed. Reg. at 57982.

[40] *See* Appendix 7 (CMBS 10-year data) and Appendix 8 (interest-only data).

[41] Proposed Rule § __.17(a)(5)(ii), 78 Fed Reg. at 58041.

[42] 78 Fed. Reg. at 57982.

[43] *See, e.g.,* Appendix 9 (demonstrating peak performance of CMBS loan classes).

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eliminate the lower LTV/CLTV ratio caps on loans documented with appraisals that utilize lower cap rates.

CRE Finance Council Recommendation: Eliminate the lower LTV/CLTV ratio caps for loans documented with appraisals that utilize lower cap rates.

C. B-Piece/Operating Advisor Issues

Section __.7 of the Proposed Rule outlines the rules that apply when a third-party purchaser – or "B-Piece Buyer" in our parlance – bears the retention obligation. These rules require an Operating Advisor to have a formalized role in any CMBS deal that utilizes the B-Piece retention option. In our Prior Comment Letter, we generally expressed our support for these rules and we suggested a number of modifications designed to make the proposed retention scheme operate efficiently and be less disruptive of current CMBS market practices. We believe the Agencies' constructive approach to these issues in the Proposed Rule is a step forward, and we thank the Agencies for adopting several of the CRE Finance Council's recommendations for improving the B-Piece retention rules and for recasting the Operating Advisor role to be more in line with current marketplace practices and investor demands.

In that spirit, we have four additional suggestions that CREFC's members collectively believe are vital to fostering an efficient CMBS marketplace while not sacrificing investor protection in any way. If the Agencies are sincere in their interest in "increase[ing] the likelihood that third-party purchasers will assume risk retention obligations,"[44] it is imperative that these four recommendations be incorporated into the final rules.

1. Where two B-Piece Buyers hold the EHRI, a senior-subordinate structure should be allowed in addition to *pari passu*

Under the proposed rule, two third-party purchasers – B-Piece Buyers – can be used to satisfy the overall 5-percent of fair value risk retention requirements by purchasing the EHRI, provided that each of the purchasers' interests are held *pari passu*. According to the Proposed Rule, the reason for the *pari passu* requirement is so that "neither third-party purchaser's losses are subordinate to the other's losses."[45] The structure in the Proposed Rule is different from the Prior Proposed Rule, as the Agencies felt it was "appropriate" to provide for "additional flexibility" for retention in this space.[46]

[44] 78 Fed. Reg. at 57953.

[45] *Id*.

[46] *Id*.

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The challenge posed by the new Proposed Rule is one of capacity in the marketplace. Today, the B-Piece investor community typically purchases 6 or 7-percent of the par value of a deal at a discount that translates into a typical investment of 2.5 to 3-percent of the fair value of the deal proceeds. Under the proposal, B-Piece Investors will need to raise the capital to consume the expanded 5-percent fair value retention requirement. That level of retention will mean that bonds higher in the waterfall – bonds historically rated BBB-, BBB, and potentially even A- – will be swept into the EHRI retention position.

Presumably, the capital the B-Piece Buyer will need to raise is capital from investors that currently are buying lower-rated investment grade bonds. Appendix 10 illustrates the take-up rate that would have been necessary for each bond class tranche for several recent deals when the EHRI is based on a 5-percent fair value calculation. The mixing of capital sources that have different risk-return profiles presents significant logistical impediments that will yield market inefficiencies, cost and ineffectiveness.

Allowing the sharing of the retention obligation across two investors should at least partially address the potential capital shortfalls. Requiring the two investors to hold their positions in *pari passu*, however, only will create considerable pricing and structuring challenges. As noted above, the B-Piece Buyers will have to absorb positions that cross over from investment grade to non-investment grade bond classes, which presumes that the investor base will be willing and able to buy across the capital stack. Given legal, operational and fiduciary constraints, IG Investors essentially are never able to invest in the non-rated bond classes.

Institutional IG investors that seek the higher yield of the lower-rated bond tranches could potentially fill the gap, but they often are constrained by law or by fiduciary limitations. Because of their restrictions on investing in non-IG or unrated bonds, however, they will be unable to participate in a *pari passu* EHRI investment. As a result, the *pari passu* structure will reduce the overall amount of available CMBS capital and investors' ability to target their investments by risk. It also will reduce the ability to efficiently price each layer in the capital structure, thereby raising the weighted average cost of capital, and exposing the parties in the transaction to additional transactional costs.

A senior/subordinate structure is better aligned with current marketplace practice; would be a much more efficient structure overall;[47] and would adhere to the fundamental principle of risk-targeting that the CMBS market serves. It would allow institutional investors seeking the additional yield that the lower-rated bond classes provide to participate in the retention regime by investing in the rated component of the EHRI. Allowing a senior/subordinate risk retention sharing regime thus could preserve the basic capital structures that currently drive CMBS.

[47] Another 14 percent of the Investment-Grade Investors responding were neutral on this question and only 14 percent of those responding were opposed.

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In addition, providing for *pari passu* B-Piece ownership creates potential issues regarding the exercise of control over servicing decisions, the direction of certain matters regarding specially serviced loans, and the appointment and replacement of the special servicer. It is long-standing CMBS practice that the first-loss entity that owns the most subordinate class of certificates that, in general, has an outstanding principal balance equal to 25 percent or more of its original principal balance (as notionally reduced by appraisal reductions), has the right to appoint a controlling class representative who has such certain consent and direction rights. Tranching of the B-Piece classes has historically been commensurate with tranching of control. The requirement that B-Piece Buyers can only hold *pari passu* interests raises the challenge of assigning control between two unrelated B-Piece Buyers who, when given joint control, may not be able to agree on various consent issues that arise throughout the deal, thereby potentially causing decision making deadlocks and delays in the servicing of the loans and an impediment to borrowers desiring to obtain various consents in an efficient manner. Joint control by two investors has historically raised significant problems when drafting provisions in servicing agreements regarding the resolution of borrower requests in an efficient manner.

There is no evidence to suggest that allowing the holders of the retained EHRI to hold those positions either in *pari passu* or in a senior/subordinate structure would create additional risk for investors or to the CMBS marketplace in general. CRE Finance Council member constituencies are in overwhelming agreement that the senior/subordinate retention structure should be permissible provided that the initial senior EHRI holder also must satisfy all of the obligations and requirements imposed on the subordinated interest holder to make that a permissible retention alternative. After the five-year hold period, however, the senior EHRI position should be fully tradable without restriction to avoid the imposition of unnecessary liquidity restrictions on the marketplace. In addition, the subordinated EHRI holder – who would be the traditional B-Piece Investor in the standard CMBS structure – must retain at least half of the overall retention obligation, or 2.5-percent of the fair value of the deal. It is for these reasons that 67.7 percent of the 31 IG Investors responding to the CREFC survey voted in favor of allowing the senior/subordinate retention structure outlined above[48] and that there is unanimous support for these recommendations among the rest of the CREFC member constituencies.[49]

CRE Finance Council Recommendation: In addition to *pari passu* ownership, the Agencies should modify the Proposed Rule to allow for up to two EHRI investors also to hold their retention positions in a senior/subordinate structure provided that the junior EHRI investor must retain at least half of the requisite EHRI (or 2.5-percent of the fair value of the deal) and

[48] Another 12.9 percent of the responding IG Investors voted a neutral position on this question.

[49] CREFC's B-Piece Buyer and Servicer forums support shorter mandatory retention periods for the senior EHRI investor and relaxed application of the independent review of the credit risk of each securitized asset requirements but there was no consensus supporting these additional changes, especially among CREFC's Investment Grade Investor community.

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<u>provided further that</u> both initial EHRI investors must each independently satisfy all of the requirements and obligations imposed on a third-party purchaser bearing the retention obligation under Section __.7.

2. Operating Advisor consultation rights should be calculated using the Appraisal Reduction Amount

The CRE Finance Council appreciates that the Agencies have responded to the request in our Prior Comment Letter to limit the Operating Advisor consultation rights to when the B-Piece first loss position has deteriorated and has been reduced in value to a level that no longer meets a reasonable "skin in the game" standard. Accordingly, under the Proposed Rule, "the consultation requirement only applies to special servicers and only takes effect once the eligible horizontal residual interest held by third-party purchasers in the transaction has a principal balance of 25 percent or less of its initial principal balance."[50]

The current market practice for evaluating principal reductions is to require use of an appraisal. While it does not appear that the Proposed Rule would prohibit the use of an appraisal to evaluate the magnitude of any principal reduction, the rule does not specify the appropriate mechanism for determining the outstanding principal balance. All of CREFC's member constituencies unanimously support specifying use of appraisals to value outstanding principal balances.

CRE Finance Council Recommendation: The Agencies should clarify that the Appraisal Reduction Amount must be used to calculate principal reduction value to evaluate when the Operating Advisor consultation rights attach.

3. The voting quorum to replace special servicers should be raised

As stated above, the CRE Finance Council strongly supports the Agencies' efforts to protect investors from unnecessary risk while attempting to preserve current marketplace standards. In that regard, the Agencies have proposed that a special servicer could be removed based on an Operating Advisor recommendation by an "affirmative vote of a majority of the outstanding principal balance of all ABS interests voting on the matter, and require a quorum of 5-percent of the outstanding principal balance of all ABS interests."[51] In support of this requirement, the Agencies have simply said that the "removal of the special servicer should be independent of whether the third-party purchaser is the controlling class in the securitization transaction or similar considerations[,]" and that "[t]he proposed

[50] 78 Fed. Reg. at 57956; *see also* Proposed Rule §__.7(b)(6)(iv) (requiring same), 78 Fed. Reg. at 58032.

[51] 78 Fed. Reg. at 57956; *see also* Proposed Rule §__.7(b)(6)(vi)(B) (requiring same), 78 Fed. Reg. at 58032.

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affirmative majority vote and quorum requirements are designed to provide additional protections to investors in this regard."[52]

The CRE Finance Council Issuer, B-Piece Buyer and Servicer forums all unanimously favor increasing the quorum requirements to be more in line with current market practices. They would, therefore, recommend a tiered-system under which the requisite quorum for a replacement vote would be two-thirds of all of those eligible to vote before the B-Piece Investor had been appraised down below 25 percent and one-third after. Even this would be a significant downward departure from current market practices under which special servicer replacement while the B-Piece Buyer remains in control either is not subject to a bondholder vote or requires a very high percentage of all bondholders (60-75 percent) to affirmatively vote for replacement. After the B-Piece Buyer no longer is in control, generally replacement is required only if at least 50 percent of all bondholders affirmatively vote in favor. Part of the B-Piece Investor and Servicer rationale for the higher thresholds is that the B-Piece Investors have special servicing rights that would be threatened by low voting thresholds at a point in time when the primary beneficiary of effective special servicing is the B-Piece Investor itself because it remains in the first-loss position.

CREFC's IG Investors do not support quorum requirements at that high a level. There is, however, concern – even among the most conservative CMBS IG Investors – that the 5-percent quorum threshold is simply too low; would open the market to manipulation; could result in unnecessary replacement of a special servicer; and could lead to the highjacking of the process by a single well-placed, but disgruntled, investor. At the other end of the spectrum, many investors are concerned that a quorum threshold that is set too high will be unachievable because of the frequent difficulty in identifying and locating many bond investors. The CREFC consensus position reconciling these two concerns is that the quorum threshold should be raised to a minimum of 20 percent with at least three separate investors participating in the vote. In a survey of CREFC's IG Investors, over 92 percent of those responding believed that the quorum rule should include a requirement that at least three separate investors must participate in the vote; and 50 percent of the responding investors opined that the appropriate quorum threshold should be 20 percent. All CRE Finance Council member constituencies thus support raising the quorum requirements to at least 20 percent (with at least 3 independent investors participating in the vote).

CRE Finance Council Recommendation: The removal of the special servicer should be subject to a majority vote of the outstanding principal balance of all ABS interests voting on the matter, but the minimum quorum requirement should be raised to 20 percent with at least three independent investors participating in the vote.

[52] 78 Fed. Reg. at 57956-7.

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4. **The Prohibition on B-Piece Buyers being affiliated with originators that contribute more than 10 percent of the loans to a CMBS loan pool should be eliminated**

The Proposed Rule would bar a third-party purchaser of the EHRI retention position generally from being "affiliated with any party to the securitization transaction (including, but not limited to, the sponsor, depositor, or servicer) other than investors in the securitization transaction,"[53] but allows for an exception for "[o]ne or more originators of the securitized assets, as long as the assets originated by the affiliated originator or originator[s] collectively comprises less than 10 percent of the principal balance of the securitized assets included in the securitization transaction at closing of the securitization transaction."[54]

While the Proposed Rule is silent on the rationale for this restriction and associated exception, the Prior Proposed Rule makes the argument that it "intended to address the potential conflicts of interest that can arise when a third-party purchaser serves as the 'controlling class' of a CMBS transaction."[55] A B-Piece Buyer in a CMBS transaction typically does, however, serve as the "controlling class" as long as the principal balance of its investment in the deal is at least 25 percent of its initial principal balance. There is no compelling reason to preclude the affiliate of an originator from purchasing the EHRI position. Indeed, two prominent institutions that represent a material percentage of B-Piece capital have affiliates heavily engaged in originating CMBS loans, and the imposition of this affiliation prohibition may jeopardize a significant amount of potential third-party purchaser capital and forestall the development of underwriting that has more integrity because of the ultimate bearing of the first-loss position by a corporate affiliate.

CRE Finance Council Recommendation: The Agencies should eliminate any prohibition on the affiliation between a third-party purchaser bearing the EHRI retention obligation and an originator of loans for that transaction. This recommendation is unanimously supported across all CREFC constituencies.

5. **Additional Operating Advisor Related Disclosures**

The Proposed Rule requires various CMBS-specific transaction document required disclosures, including required disclosures of Operating Advisor related information.[56] The required Operating

[53] Proposed Rule §__.7(b)(5)(i), 78 Fed. Reg. at 58031.

[54] Proposed Rule §__.7(b)(5)(ii)(B), 78 Fed. Reg. at 58031.

[55] 76 Fed. Reg. at 24110.

[56] *See* Proposed Rule § __.7(b)(7)(vii), 78 Fed. Reg. at 58031; *see also* discussion at 78 Fed. Reg. at 57957.

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Advisor disclosures currently include the name and form of organization of the Operating Advisor; a description of how the Operating Advisor meets the standards in the Proposed Rule (including the Operating Advisor's "experience, expertise and financial strength to fulfill its duties");[57] and the terms of the Operating Advisor's compensation.[58] Additionally, the Agencies discuss the need for the Operating Advisor to be independent to others as part of the securitization transaction, and state that "an independent Operating Advisor is a key factor in providing a check on third-party purchasers and special servicers, thereby protecting investors' interests."[59] The Proposed Rule then states that the securitization transaction documents shall provide for the fact that the Operating Advisor is not affiliated with other parties to the transaction, does not either directly or indirectly have any financial interest in the transaction (other than fees as part of its role as Operating Advisor), and will act in the best interest of investors.[60]

CREFC's IG Investors have suggested that two additional disclosures be required in order to fully ensure the independence of the Operating Advisor and there is strong support across all of the CRE Finance Council's members in support of the additional disclosure. First, any material conflict of interest or potential material conflict of interest that the Operating Advisor may have should be reported as an additional disclosure to the securitization transaction. This will allow the parties, including IG Investors, to closely scrutinize the Operating Advisor to ensure that it will truly act independently. Second, some IG Investors believe that just compensation will both attract high quality Operating Advisors and help guarantee a conflict of interest-free environment. Even though the terms of the Operating Advisor's compensation need to be disclosed,[61] additional information regarding the formula for calculating such compensation should be disclosed. By mandating disclosure of these additional points, all parties to the securitization transaction can make educated decisions. Further, it will allow the marketplace to help determine how best to make the Operating Advisor independent.

CRE Finance Council Recommendation: The Agencies should require additional disclosures related to (i) any material conflict of interests or potential conflict of interests that the Operating Advisor may have, and (ii) the formula behind the Operating Advisors compensation. Both of these disclosures will serve the goals of transaction transparency and independence of the Operating Advisor.

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[57] Proposed Rule §__.7(b)(6)(ii), 78 Fed. Reg. at 58031.

[58] Proposed Rule §__.7(b)(7)(vii)(A) – (C), 78 Fed. Reg. at 58031.

[59] 78 Fed. Reg. at 57955.

[60] Proposed Rule §__.7(b)(6)(i)(A) – (C), 78 Fed. Reg. at 58031.

[61] *See* §__.7(b)(6)(iii), 78 Fed. Reg. at 58032.

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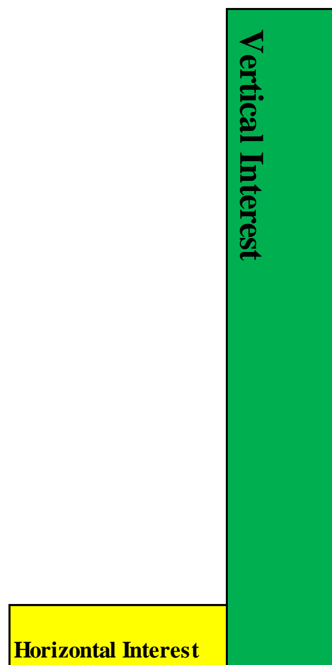
D. TECHNICAL RECOMMENDATIONS

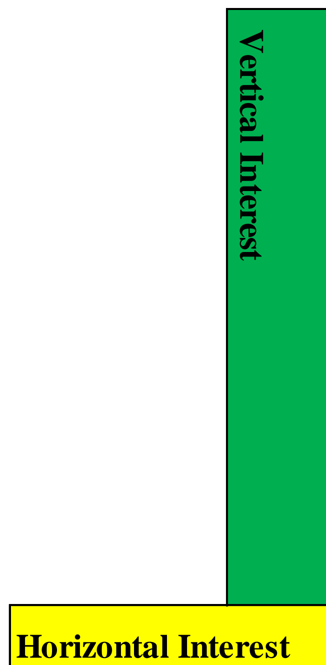
The following technical recommendations have the unanimous support of each of CREFC's constituent forum leaders. We believe that incorporation of these suggestions will ensure that the details of the proposed retention regime will be clearer and more operable in the marketplace.

1. Basic CMBS Retention – L-Shaped CMBS Retention

The Proposed Rule allows CMBS securitization sponsors to share the 5-percent fair value retention obligation with a B-Piece Investor that purchases the EHRI and the Proposed Rule further allows the retention obligations to be allocated between the two in this structure in essentially any way to which the sponsor and the B-Piece Investor agree provided that the total retained amount satisfies the core 5-percent fair value retention obligation. The question has arisen whether the sponsor's vertical retention must include a portion of the EHRI in a structure in which a B-Piece Investor will be sharing the retention obligations through its retention of the EHRI. The two graphs below illustrate the two potential L-shaped retention structures:



Alternative #1



Alternative #2

CMBS Sponsors have a strong preference for not requiring that their vertical retention include a share of the EHRI in this scenario because it avoids numerous accounting and securitization control

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problems. Given that the Proposed Rule permits a B-Piece Buyer to retain the entire 5-percent fair value retention obligation, it seems consistent with the philosophy of the Proposed Rule not to require the Sponsor to retain a portion of the EHRI in connection with L-Shaped retention. We also note that in the Prior Proposed Rule, the L-shaped risk retention proposed rule provided that the vertical portion of the retained risk was not to be calculated with respect to the ABS interests that were part of the horizontal portion of the retained risk.[62] A similar clarification should be made to the Proposed Rule.

2. Basic CMBS Retention – REMIC Residual Interests Should Be Excluded From The Retention Regime

Almost all CMBS transactions are done through a tax vehicle called a Real Estate Mortgage Investment Conduit ("REMIC"). The interests in a REMIC include one or more classes of "regular interests," which are entitled to principal and/or interest payments, and a single class of "residual interests," which generally do not receive principal or interest payments. As explained below, the sole purpose of the "residual interest" is to require the holder of that interest to be responsible for any REMIC net income tax obligation. Because the holder of that interest does not share any of the credit risk in the underlying transaction, the REMIC "residual interest" should not be subject to any of the retention requirements.

The principal benefit of the REMIC structure is that it is not taxed at the entity level.[63] Congress, however, wanted to ensure that to the extent the REMIC itself generates net income, tax would be paid on that income. Congress therefore required that the tax on any net income earned by the REMIC be paid by the holders of the "residual interest."[64] There is no requirement that a residual interest be entitled to any principal or interest. In fact, in the overwhelming majority of securitizations in the market, the holder of the residual interest is not entitled to any principal or interest.[65] The residual interest does not represent an economic interest in the securitization but is nevertheless responsible to pay the REMIC's taxes.[66]

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[62] *See* Prior Proposed Rule, 76 Fed. Reg. at 24103 (discussing same).

[63] § 860A(a) of the Internal Revenue Code of 1986, as amended (the "IRC").

[64] IRC § 860C.

[65] Although it is structurally possible that a residual interest could receive proceeds from the sale of foreclosed property that exceed the amounts owed to regular interest holders, it would be rare that such amounts are in fact ever received. Such amounts received, if any, would also be substantially less than the total tax liability generated by the residual interest.

[66] Because the residual interest represents income without any corresponding cash, it is often referred to as being "non-economic." Buyers of residual interests are paid upfront to bear the future liability of the securitization.

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Because a non-economic residual interest represents a tax liability, Congress was concerned that it not be held by persons who were unlikely to pay tax, such as certain tax-exempt entities (including "disqualified organizations") or non-U.S. persons.[67] Special rules exist to ensure that the taxable income of a REMIC is collected and that transfers to disqualified organizations are disregarded.[68] All pooling and servicing agreements contain restrictions against the transfer of a residual interest to an even broader category of "non-permitted" persons. While many sponsors, such as U.S. banks, would not be subject to these restrictions, other sponsors, such as funds, may be. Even sponsors that would be permitted to hold residual interests often find it less expensive or less burdensome to pay someone else to hold the residual interest and bear the future taxes. Any rule subjecting the "residual interest" to the risk retention requirements would upset the normal course of securitization formation without generating any off-setting benefit for the retention regime.

3. Basic CMBS Retention – Treatment of *Pari Passu* and Subordinated Notes and Participation Interests as Retention

In many smaller loan pool deals – floater deals or "large loan" deals with ten or fewer loans for example[69] – each loan included in the deal often has a companion *pari passu* note or participation interest or a subordinated note or participation interest (collectively, "Retained Interests") that is not included in the CMBS loan pool. The Retained Interests are in all ways relevant to risk retention and alignment of interests identical to any other ABS interest issued by the securitization vehicle. Only the form differs (since the Retained Interests are not technically issued by the securitization vehicle). The loans subject to Retained Interests are serviced under the related CMBS transaction documents; cashflow and losses are allocated to Retained Interests similarly to comparable ABS interests; and the owners of Retained Interests are in every way exposed to the performance of the related commercial mortgage loans in the same ways as the holders of ABS interests.

The retention of Retained Interests by a sponsor, originator or B-piece Buyer, in compliance with all other requirements for risk retention applicable to retention of ABS interests, should be a permissible form of risk retention. So long as the Retained Interests related to a CMBS transaction have an aggregate fair value of at least 5-percent of the total fair value of all ABS interests and related Retained Interests, then retention of the Retained Interests will satisfy the purposes of the retention requirements because the Retained Interests constitute "skin in the game" equivalent to holding a

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[67] A "disqualified organization" includes the United States, any state or any political subdivision thereof, an organization that is exempt from tax (except certain farmers' cooperatives and tax-exempt organizations subject to the tax on "unrelated business income") and rural telephone and electricity cooperatives. IRC § 860E(e)(5).

[68] IRC § 860E(e).

[69] This logic applies equally to SBSC transactions, although the CRE Finance Counsel believes strongly that such transactions should be exempt from risk retention for the reasons explained elsewhere in this comment letter.

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retention in ABS interests issued by the CMBS vehicle. The added structural flexibility permitted by Retained Interests would allow retention in a more efficient form for certain investors (e.g., investors that for various regulatory or other reasons prefer to own "whole loan" interests rather than interests in the form of securities issued by a securitization vehicle). At the same time, the retention of Retained Interests does not compromise in any way the purposes served by risk retention.

4. QCRE – Certain Provisions of Section __.17 Should be Modified to Limit the Scope of the Requisite "Security Interest" and More Generally To Take Into Account *Pari Passu* and Junior Liens Loans

Pari passu notes are a common feature of the CRE loan market. Large commercial mortgage loans originated by a syndicate of investment banks on a *pari passu* basis (and/or with associated junior lien loans), for example, are extremely common in the current market, given that sponsors are often desirous of maximizing their exposure to a diversity of banks, and multiple banks are often bidding for and awarded the origination on a joint and several basis. The *pari passu* loans tend to be of the highest underwriting quality because of the marquis properties to which they are often attached and because of the additional hurdles to which such loans are subject (issuer retention of one of the notes or multiple securitizations, for example). A *pari passu* note should not be ineligible for QCRE loan treatment if it otherwise satisfies the applicable requirements (including the CLTV limitations). Where several major banks are involved in the origination process in such a large pari passu origination, there is generally a higher level of underwriting, due diligence and credit review, as multiple banks are involved in the diligence.

To satisfy the QCRE loan requirements, certain provisions of Section __.17 would need to be modified to account for QCRE loans that have associated *pari passu* loans and/or junior lien loans (which are expressly mentioned but not correctly accounted for) that are held outside the subject securitization trust.

For example, the following clarifications would need to be made:

(i) Section __.17(a)(1)(ii) which deals with assignment of leases and other property interests – insert after (ii) but prior to (A): "requires (together with any *pari passu* lien loans and/or junior lien loans on the subject mortgaged property, as their interests may appear)."[70]

(ii) Section __.17(a)(1)(iii)(A) requires the originator to obtain a security interest in "all interests of the borrower and any applicable operating affiliate" in the collateral that secures the loan."[71] Imposition of this requirement is consistent with marketplace and other legal requirements but

[70] Proposed Rule § __.17(a)(1)(ii), 78 Fed. Reg. at 58040.

[71] Proposed Rule § __.17(a)(1)(iii), 78 Fed. Reg. at 58040.

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only to the extent necessary to perfect the lender's interest in the property. Generally, the security interest is limited to the outstanding balance on the loan and the borrower (or other lien holders) are entitled to any overage. Two provisions would need to be amended to address these concerns. First, to address the *pari passu*/junior lien holder issue, insert after "A security interest" at the beginning of (iii) the words "Together with any pari passu lien loans and/or junior lien loans on the subject mortgaged property as their interests may appear". Second, at the end of (A) and (B) to deal with ensuring that the protection is properly sized, insert the words "to the extent necessary to perfect the bondholders' interest in the property".

(iii) The definitions of "DSC" and "CLTV" would need to be revised to recognize the *pari passu* interests by inserting "(together with any *pari passu* line loans but without regard to any junior lien loans)" at the very end of the DSC definition as the last clause in (2)(ii)[72] and by inserting "(together with any *pari passu* first lien mortgage loans)" in the CLTV definition after the words "first lien mortgage loan".[73]

We believe that the foregoing clarifications are necessary to ensure that the QCRE loan provisions are viable and consistent with reasonable market practice and other legal requirements. Accommodating *pari passu* lien loans is crucial in order to afford borrowers the ability to obtain large loan financing, and to permit multiple banks to participate in the origination of large commercial loans. There is no additional risk as the income from the property is simply divided on a *pari passu* basis among the senior lenders. There is no supportable reason that *pari passu* notes should not be eligible for QCRE loan treatment if they otherwise satisfy the applicable requirements (including the DSC and CLTV limitations). In addition, the security interest requirements also need to be reformed to ensure that that interest is not required to be more than necessary to protect the lenders' interests.

5. QCRE – Appraisals

Section __.17(a)(2)(ii) requires the originator to obtain a written appraisal. Written appraisals are a standard requirement for CMBS loans. Two details in the Proposed Rule requirement, however, warrant modification.

First, subsection (A) requires that the appraisal be done "by an appropriately State-certified or State licensed appraiser."[74] The standard market requirement is that the appraisal must satisfy Uniform Standards of Professional Appraisal Practice ("USPAP") requirements as adopted by the Appraisal

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[72] *See* Proposed Rule §_.14 ("DSC" Definition), 78 Fed. Reg. at 58037.

[73] *See* Proposed Rule §_.14 ("CLTV" Definition), 78 Fed. Reg. at 58037.

[74] Proposed Rule § __.17(a)(2)(ii)(A), 78 Fed. Reg. at 58040.

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Standards Board of the Appraisal foundation. Many commercial appraisers meet the USPAP requirements but are not state certified or licensed as the certifications and licensure generally have more resonance in the residential real estate space

Second, subsection (C) requires an "'as is' opinion of the market value of the real property, which includes an income valuation approach that uses a discounted cash flow analysis."[75] The requirement that the opinion be based on a DCF approach may not be appropriate for a stabilized property like a mature multifamily property. Therefore, we recommend that the valuation approach could use a DCF or a direct cap rate analysis.

6. QCRE – Insurance Requirements

Section __.17(a)(3)(iii) – require each borrower and each operating affiliate to "[m]aintain insurance that protects against loss on collateral for the CRE loan . . . at least up to the amount of the loan . . . "[76] Generally, the standard insurance requirement is based on the lower of the loan balance or the replacement cost. If the replacement cost is lower than the loan amount, the borrower should not be required to maintain a higher level of insurance than is necessary to rebuild.

7. QCRE – Prior "Borrower" Performance

The QCRE loan underwriting requirements require that "based on the previous two years' actual performance, the *borrower* had" satisfied certain minimum Debt-Service Coverage ("DSC") ratios.[77] Commercial mortgage loans originated for CMBS often require the related real estate owners to transfer subject properties into newly formed special purpose borrowing entities. As such, the "borrower" for most such loans will not have existed for two years (or for any substantial period) prior to the origination of the loan and therefore the "borrower" cannot have had any particular DSC ratio, because that "borrower" did not exist and the financing upon which the DSC calculation is based also did not exist.

We interpret this requirement to mean that, based upon the financial performance of the subject property in the last two fiscal years ending prior to loan origination, the new loan (and the new borrower/property owner) would have had a DSC ratio (based upon the principal balance and interest rate of the new loan) that meets the specified requirements. A clarification that this interpretation is correct would be helpful.

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[75] Proposed Rule § __.17(a)(2)(ii)(C), 78 Fed. Reg. at 58040.

[76] Proposed Rule § __.17(a)(3)(iii), 78 Fed. Reg. at 58041.

[77] Proposed Rule § __.17(a)(2)(vi) (*emphasis* added), 78 Fed. Reg. at 58040.

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8. Floating Rate Mortgage Loans & Interest Rate Cap Contracts

The Proposed Rule excludes variable rate mortgage loans from the definition of QCRE loan, unless the borrower "obtained a derivative that effectively results in a fixed interest rate."[78] While we understand the Agencies' concern that exposure to rising interest rates may not be consistent with QCRE status, it is common for floating rate commercial mortgage loans originated for securitization to require the borrower to acquire and pledge an interest rate cap contract (rather than a swap agreement) from a credit-worthy counterparty as additional collateral for the loan. The use of a cap contract rather than a swap has two significant benefits. First, cap contracts provide for "one-way" payments: the counterparty is required to pay the borrower in the event that interest rates rise, however, the borrower benefits in a low or declining interest rate environment, since it is not required to make payments to the cap counterparty. A borrower subject to an interest rate swap agreement derives no benefit from low interest rate environments, because the "two-way" nature of the payments under a swap contract requires the borrower to pay the swap counterparty to the extent that interest rates decline below the "strike rate" under the swap contract.

Second, because swap contracts require the borrower to make payments to the swap counterparty in declining interest rate environments, the swap counterparty becomes a creditor of the borrower. Because CMBS borrowers typically are "special purpose entities" having only one creditor (i.e., the lender under the mortgage loan), the imposition of a second creditor makes such loans less secure than typical CMBS loans. Interest rate cap providers are not, under any circumstances, entitled to receive payments from the borrower (other than an up-front payment made at loan origination) and, therefore, can never be creditors of the borrower.

The Agencies should therefore allow floating rate commercial mortgage loans to qualify as QCRE loans, provided that such loans satisfy all other QCRE criteria; and, provided further that the related borrower pledges an interest rate cap contract from a credit-worthy counterparty with a strike rate that effectively sets a maximum interest exposure for the borrower which, when employed in a DSCR calculation, results in a DSCR for such mortgage loan that is consistent with QCRE status.

9. Exemption Process

As the Agencies expressly have noted:

> [S]ection 15G(e)(1) permits the agencies jointly to adopt or issue additional exemptions, exceptions, or adjustments to the risk retention requirements of the rules, including exemptions, exceptions, or

[78] Proposed Rule § __.17(a)(7)(iii)(B), 78 Fed. Reg. at 58041.

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> adjustments for classes of institutions or assets, if the exemption, exception, or adjustment 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.[79]

To ensure that Section 15G(e)(1) is implemented in a way that provides a meaningful opportunity to request an exemption, exception, or adjustment to the risk retention requirements, it is imperative that the Agencies circumscribe a formal 15G(e)(1) process in the final rules. The Agencies previously have indicated that they intend to jointly issue all guidance related to the risk retention rules;[80] while that is a laudable objective, it does create logistical challenges for those endeavoring to abide by a complicated set of rules that will require additional interpretation (and correction) as we move forward. Promulgating a formal set of rules for those seeking such assistance and redress would be a welcome development for marketplace participants.

CONCLUSION

The CRE Finance Council again recognizes that an extraordinary amount of thought and work went into the development of the Proposed Rule and we appreciate the extent to which the Agencies responded to and incorporated the concerns and suggestions of the CMBS market in re-crafting the Proposed Rule. Our members continue to believe that the Agencies' efforts to craft provisions that seek to address the unique characteristics of the CMBS market represent a productive step toward developing a risk retention framework that will be practical from the industry's perspective and attain the goals of the Act. Given the important role that commercial real estate plays in the economy, and the critical function that securitization, in turn, serves in commercial real estate, the Agencies must

[79] 78 Fed. Reg. at 57969-70.

[80] 78 Fed. Reg. at 57933.

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take the necessary time to get this right, and the CRE Finance Council looks forward to working further with the Agencies on this endeavor.

Sincerely,

Stephen M. Renna
President & CEO
CRE Finance Council

cc: The Honorable Shaun Donovan
Secretary
United States Department of Housing and Urban Development
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Mr. Edward DeMarco
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ATTACHMENTS

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APPENDIX 1: CREFC and Industry Background

Industry-led Reforms

Since the crisis, CMBS market participants have sought to address industry weaknesses. A broad variety of stakeholders have taken steps to promote greater levels of discipline in loan origination, structuring, monitoring, and disclosure.

As part of its core mission, CRE Finance Council works closely with its members, including the majority of CMBS issuers, B-piece buyers and servicers, as well as leading investors in the asset class, to establish best practices. In response to the crisis, CRE Finance Council members developed and enhanced several sets of documentation and practice standards, which materially add to market transparency, standardization and efficiency.

The below templates and standards were developed by working groups under the auspices of the CRE Finance Council and staffed by volunteers from the CRE lending, investing and servicing communities. These resources are reviewed and refreshed ongoing, so as to remain relevant and meaningful.

1. ***CREFC Investor Reporting Package (U.S. and EU Versions):*** Standardized and comprehensive package of bond, loan and property level information used extensively in the CMBS marketplace. This data is collected prior to issuance and throughout the life of the transaction.
    a. ***CREFC Special Servicing Disclosure Reports added to IRP™:*** New disclosure reports adopted December 2012 providing increased transparency surrounding special servicer activities, including information regarding affiliates, fees, loan modification decisions, and the final disposition of specially-serviced CMBS loans.
    b. ***Standardized Annex A:*** Provides a deep data dive on the largest loans within the transaction, including enhanced granularity regarding operating statements and additional data with respect to escrow accounts and reserves.

2. ***Pooling and Servicing Agreement (PSA):*** First offered to the public by CREFC's predecessor, Commercial Mortgage Securities Association. Since the crisis, numerous enhancements and modifications have been made, including more specific deal terms and conflict resolution standards for issues involving servicers.

3. ***Model Representations & Warranties:*** Standardized set of representations and warranties for inclusion in transaction documentation regarding the accuracy of loans in the pool, including more than 50 parameters. This is a critical feature of CMBS documentation as it enables investors to pursue loan repurchases in the event of material

breaches; representations and warranties essentially function as a loan-level form of "skin-in-the-game" for the originators, issuers and sponsors.

4. ***Principles-Based CRE Loan Underwriting Framework:*** Set of principles establishing industry best practices in underwriting processes and characteristics, encouraging standardization and lower risk-taking in lending.

APPENDIX 2: Closing Date Cash Flow v. Principal Repayment Test

Risk Retention - Alternative Test

Conclusion: It is imperative that par, not fair value, be used as the valuation treatment CMBS in order for the Alternative regulatory test to apply within in the context of current economics and market practices. If fair valuation is maintained as part of the requirement, most, if not all, CMBS deals will fail the test until maturity.

Note: For the purposes of simplicity, the below assumes no losses to the pool. Losses would further challenge the deal, making it increasingly difficult to pass the Alternative test, especially if treated under fair value. This bolsters the case that the Alternative test is viable only in a par valuation environment.

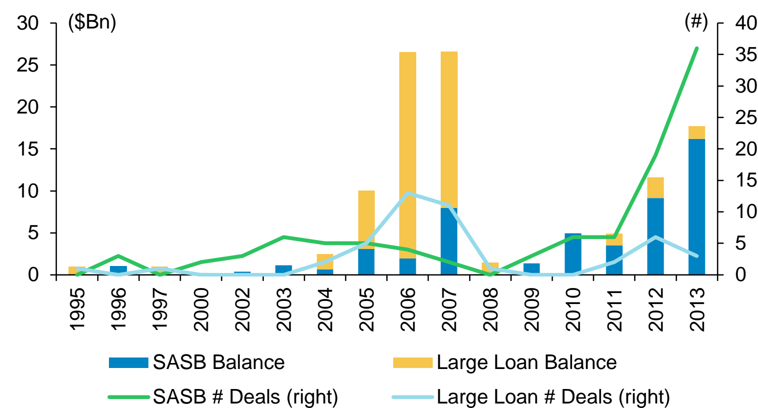
Parameter	Value
Pool Balance	$1,250,000,000
WAC	5.25%
WAM	10
WARA	30
Discount Rate on Pool	4.75%
Fair Value of Pool	$1,295,526,185
Fair Value % Principal	103.6%
Ex Post CDR Assumption	0.00%
Severity Assumption	45.0%
Note: Assumes no liquidation lag	
Total Losses	0.0%
FV of HRI	$64,776,309
Discount Rate on HRI	14.00%
Current Yield on HRI	6.40%
HRI WAL	10
HRI Implied Principal	$159,973,803
HRI Purchase Price	$0.405
HRI Implied Coupon Rate	**2.59%**
HRI Principal Percentage of Total Pool	**12.8%**
Loss-Adjusted IRR	14.0%

	Loss-Adjusted Pool Amounts								HRI Loss-Adjusted Cash Flows					CREFC Test		
Year	Defaults	Liquidations	Losses	PPMTs	IPMTs	EB	CF	TOT. PRIN PMTs	IPMTs	Losses	PPMTs	EB	CF	HRI: % of CF as % of UPB	Rest of Pool: % of CF as % of UPB	HRI % < Rest of Pool %?
0						$1,250,000,000						$159,973,803	($64,776,309)			
1	$0	$0	$0	$18,021,167	$65,625,000	$1,231,978,833	$83,646,167	$18,021,167	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.4%	**OK**
2	$0	$0	$0	$18,967,278	$64,678,889	$1,213,011,555	$83,646,167	$18,967,278	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.5%	**OK**
3	$0	$0	$0	$19,963,060	$63,683,107	$1,193,048,495	$83,646,167	$19,963,060	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.7%	**OK**
4	$0	$0	$0	$21,011,121	$62,635,046	$1,172,037,374	$83,646,167	$21,011,121	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	7.9%	**OK**
5	$0	$0	$0	$22,114,205	$61,531,962	$1,149,923,169	$83,646,167	$22,114,205	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.0%	**OK**
6	$0	$0	$0	$23,275,201	$60,370,966	$1,126,647,968	$83,646,167	$23,275,201	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.2%	**OK**
7	$0	$0	$0	$24,497,149	$59,149,018	$1,102,150,820	$83,646,167	$24,497,149	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.4%	**OK**
8	$0	$0	$0	$25,783,249	$57,862,918	$1,076,367,571	$83,646,167	$25,783,249	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.7%	**OK**
9	$0	$0	$0	$27,136,869	$56,509,297	$1,049,230,702	$83,646,167	$27,136,869	$4,145,684	$0	$0	$159,973,803	$4,145,684	2.6%	8.9%	**OK**
10	$0	$0	$0	$1,049,230,702	$55,084,612	$0	$1,104,315,313	$1,049,230,702	$4,145,684	$0	$159,973,803	$0	$164,119,487			
11	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
12	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
13	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
14	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
15	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
16	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
17	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
18	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
19	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
20	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
21	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
22	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
23	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
24	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
25	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
26	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
27	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
28	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
29	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			
30	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0			

APPENDIX 3: Loan Issuance and Maturation

Deal Balance By Issuance Year

Year	Balance ($) SASB	Balance ($) Large Loan	Number of Deals SASB	Number of Deals Large Loan
1995	0	967,185,797	0	1
1996	1,072,448,928	0	3	0
1997	0	977,099,000	0	1
2000	236,967,406	0	2	0
2002	361,964,000	0	3	0
2003	1,147,659,000	0	6	0
2004	644,200,000	1,834,015,102	5	2
2005	3,108,700,000	6,944,884,010	5	5
2006	1,981,273,330	24,573,697,961	4	13
2007	7,957,901,391	18,623,193,266	2	11
2008	0	1,438,411,000	0	1
2009	1,360,000,000	0	3	0
2010	4,947,990,100	0	6	0
2011	3,509,601,594	1,403,042,765	6	2
2012	9,128,506,326	2,478,912,811	19	6
2013	16,193,193,878	1,514,949,000	36	3



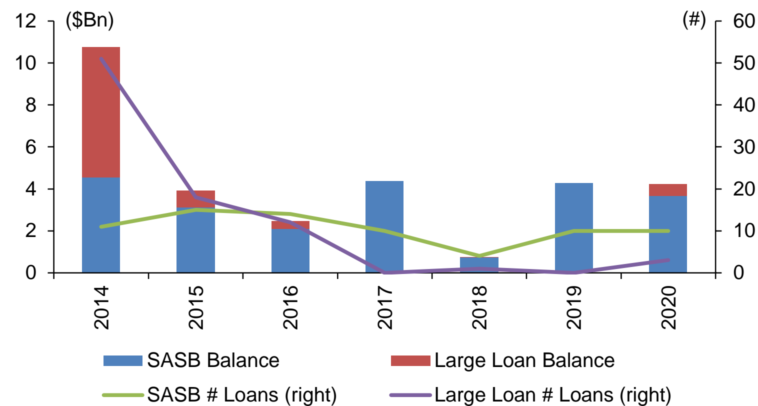
Source: Trepp, Morgan Stanley Research

APPENDIX 3: Loan Issuance and Maturation

Loan Balance By Maturity

	Balance ($)		Number of Loans	
Year	SASB	Large Loan	SASB	Large Loan
2014	4,540,654,166	6,210,789,865	11	51
2015	3,124,473,609	791,406,231	15	18
2016	2,091,398,327	380,400,000	14	12
2017	4,375,735,012		10	0
2018	732,530,275	11,355,284	4	1
2019	4,277,838,655		10	0
2020	3,664,851,429	552,912,000	10	3

Source: Bloomberg, Trepp, Morgan Stanley Research
Note: Includes loans that have optional extensions



APPENDIX 4: Cumulative Loss Rates and Loss Severities

Cumulative Loss Rate					
	All Time	**2013 YTD (201309)**	**2012**	**2011**	**2010**
SASB	0.25%	0.00%	0.00%	0.00%	0.53%
Conduit	2.79%	0.86%	1.18%	1.12%	0.73%

Source: Trepp

Average Corporate Debt Recovery Rates Measured by Post-Default Trading Prices						
	Issuer-weighted			**Volume-weighted**		
Lien Position	**2012**	**2011**	**1982-2012**	**2012**	**2011**	**1982-2012**
1st Lien Bank Loan	67.0%	70.9%	66.0%	66.8%	77.8%	59.9%
2nd Lien Bank Loan*	17.4%	68.3%	29.8%	15.3%	67.5%	28.2%
Sr. Unsecured Bank Loan*	n.a.	23.1%	47.1%	n.a.	43.0%	40.2%
Sr. Secured Bond	51.2%	63.4%	51.6%	28.4%	57.7%	49.8%
Sr. Unsecured Bond	43.4%	39.7%	37.0%	40.2%	55.2%	37.8%
Sr. Subordinated Bond	29.7%	36.7%	30.9%	35.5%	31.5%	25.7%
Subordinated Bond	35.4%	35.4%	31.5%	30.9%	35.2%	25.3%
Jr. Subordinated Bond	n.a.	n.a.	24.7%	n.a.	n.a.	17.1%

* The recovery rates for 2011's and 2012's second lien and unsecured bank loans were based on no more than three observations, respectively

Source: Moody's Investors Service

APPENDIX 4: Cumulative Loss Rates and Loss Severities

Vintage	Single Asset/Borrower Deals Total Sec. Bal.	oss Amour	Cum. Loss %
1997	953,691,691	-	0.00%
1998	1,005,000,000	-	0.00%
1999	1,707,187,444	3,627	0.00%
2000	3,236,375,546	#######	0.11%
2001	4,759,636,946	272,536	0.01%
2002	2,508,823,945	3,812	0.00%
2003	2,227,159,000	-	0.00%
2004	4,247,025,000	-	0.00%
2005	12,083,629,700	-	0.00%
2006	10,146,778,330	930,513	0.01%
2007	13,807,901,391	#######	1.77%
2009	1,360,000,000	-	0.00%
2010	12,747,896,207	-	0.00%
2011	3,509,601,594	-	0.00%
2012	9,293,506,326	-	0.00%
2013	16,078,193,878	-	0.00%
Grand Total	**99,672,406,998**	**########**	**0.25%**

	Cumulative Loss Rate				
	All Time	2013 YTD (201309)	2012	2011	2010
SASB	0.25%	0.00%	0.00%	0.00%	0.53%
Conduit	2.79%	0.86%	1.18%	1.12%	0.73%

SASB Deals							
Deal	Property Name	roperty Typ	Closing Date	Vintage	Orig Bal	Total Loss	Loss %
stein971	Steiner Properties, LLC	Various	19970327	1997	60,416,691	-	0.00%
sctsdale	Scottsdale Fashion Squa	RT	19970812	1997	156,000,000	-	0.00%
uswfb1a	Kansas Gas & Electric #4	Various	19970930	1997	177,275,000	-	0.00%
13gengro	13 Affiliates of General	RT	19971125	1997	560,000,000	-	0.00%
fairfax	Fair Oaks Mall	RT	19980303	1998	140,000,000	-	0.00%
ltt981	Library Tower	OF	19980311	1998	200,000,000	-	0.00%
aventura	Aventura Mall	RT	19980406	1998	200,000,000	-	0.00%
ge981	Various	Various	19980925	1998	465,000,000	-	0.00%
cr99zc1	Various	Various	19990225	1999	140,000,000	-	0.00%
star99c1	Starwood Portfolio	LO	19990316	1999	541,328,908	-	0.00%
1251xl	1211 Avenue of the Am	OF	19990412	1999	450,000,000	-	0.00%
ms991nyp	One New York Plaza	OF	19990608	1999	245,858,536	-	0.00%
mcmt99c1	Sheraton Fisherman's W	LO	19990830	1999	330,000,000	3,627	0.00%
vfc00vno	Various	RT	20000301	2000	500,000,000	128	0.00%
smp001	SDG Macerich 13 Prope	RT	20000412	2000	138,500,000	-	0.00%
bc2000a	Various	Various	20000419	2000	109,690,006	542,299	0.49%
fts004ts	Various	Various	20000504	2000	430,000,000	2,893,450	0.67%
fb1211aa	1211 Avenue of the Am	OF	20000512	2000	300,000,000	135,510	0.05%
1345aoa	1345 Avenue of the Am	OF	20000928	2000	450,000,000	-	0.00%
gs00dw1	Various	IN	20001017	2000	264,555,825	1,072	0.00%
ppglp0c1	The Providence Place M	RT	20001102	2000	127,277,400	-	0.00%
hilton00	Hilton Hotels Portfolio	LO	20001109	2000	499,580,782	7,826	0.00%
pruhtgc1	Various	RT	20001130	2000	243,885,659	-	0.00%
cr00zc2	Various	Various	20001213	2000	172,885,874	-	0.00%

APPENDIX 4: Cumulative Loss Rates and Loss Severities

msxl280	280 Park Avenue	OF	20010207	2001	269,805,327	66,811	0.02%
bs01epr	Various	OT	20010214	2001	125,000,000	-	0.00%
gs01lib	One Liberty Plaza	OF	20010223	2001	432,000,000	-	0.00%
bacm01fm	The Florida Mall	RT	20010223	2001	269,715,565	-	0.00%
ml01hrpt	Office Portfolio Trust	OF	20010228	2001	259,828,148	-	0.00%
chase245	245 Park Avenue	OF	20010313	2001	500,000,000	194,956	0.04%
pgmt01xl	Potomac/Gurnee Mills	RT	20010501	2001	354,807,985	-	0.00%
ms01sgm	Sawgrass Mills	RT	20010731	2001	300,000,000	-	0.00%
lbubswm	Various	RT	20010809	2001	800,000,000	-	0.00%
gsms1285	1285 Avenue of the Am	MU	20010816	2001	372,250,000	6,858	0.00%
ms01frm	Freehold Raceway Mall	RT	20010926	2001	177,776,741	3,911	0.00%
cr01zc1	Various	Various	20011127	2001	103,341,595	-	0.00%
jpm01kp	Kings Plaza	RT	20011130	2001	172,051,784	-	0.00%
lb01c7a	299 Park Avenue	OF	20011206	2001	44,000,000	-	0.00%
fb01lcca	Portfolio	HC	20011213	2001	449,059,801	-	0.00%
ball1wbm	Waikiki beach Marriott	LO	20011227	2001	130,000,000	-	0.00%
gs02calw	Various	IN	20020226	2002	950,000,000	-	0.00%
ms02wm	Woodfield Shopping Ce	RT	20020326	2002	43,000,000	417	0.00%
fvmmt02c	Fashion Valley Mall	RT	20020327	2002	29,123,704	-	0.00%
gmacn2fl	Fort Lewis Army Base	MF	20020401	2002	150,000,000	-	0.00%
gmac02md	Fort Meade Military Ho	MF	20020523	2002	325,000,000	-	0.00%
gmacn02a	Various	Various	20020816	2002	64,600,000	-	0.00%
vfmmt2c4	Westfield Shoppingtow	RT	20020906	2002	49,736,241	3,395	0.01%
1166aoa	1166 Avenue of the Am	OF	20021008	2002	147,364,000	-	0.00%
calst2c6	Various	MU	20021205	2002	750,000,000	-	0.00%
ept03epr	Various	Various	20030227	2003	155,500,000	-	0.00%
basn03rt	Renaissance Tower	OF	20030415	2003	20,000,000	-	0.00%
gmac03ea	Laurelwood	OT	20030501	2003	21,959,000	-	0.00%
gmac03kl	Kirtland Housing	MF	20030508	2003	74,000,000	-	0.00%
calw031	Various	IN	20030625	2003	460,000,000	-	0.00%
gmac03fd	Ford Island Housing	MF	20030715	2003	114,000,000	-	0.00%
gmac03fb	Fort Bragg Housing	MF	20030801	2003	296,000,000	-	0.00%
ms03kids	Various	Various	20030811	2003	300,000,000	-	0.00%
ms03bnb	Various	Various	20030930	2003	30,000,000	-	0.00%
gmac03pr	Presidio of Monterey/N	MF	20031015	2003	355,200,000	-	0.00%
gmac03st	Stewart/Hunter Army A	MF	20031112	2003	246,500,000	-	0.00%
gmac03ca	Various	Various	20031201	2003	154,000,000	-	0.00%
cdc04cm	California Market Cente	RT	20040116	2004	16,000,000	-	0.00%
ms04gst1	Various	Various	20040205	2004	418,000,000	-	0.00%
olcm04c3	One Lincoln Street	OF	20040527	2004	311,000,000	-	0.00%
gmac04fl	Fort Lewis Project	MF	20040610	2004	75,000,000	-	0.00%
bs04esa	Various	LO	20040629	2004	2,050,000,000	-	0.00%
gmac04de	Fort Detrick and WRAM	MF	20040809	2004	83,200,000	-	0.00%
gmac04fp	Fort Polk Project	MF	20040910	2004	165,000,000	-	0.00%
fb04cbn1	Various	Various	20041022	2004	5,000,000	-	0.00%
tower042	Various	Various	20041207	2004	293,825,000	-	0.00%

APPENDIX 4: Cumulative Loss Rates and Loss Severities

fb04hc1	Various	HC	20041215	2004	820,000,000	-	0.00%
gmacn4pn	Camp Pendleton Projec	MF	20041230	2004	10,000,000	-	0.00%
gmacn5hc	Hickam Air Force Base F	MF	20050301	2005	212,000,000	-	0.00%
nlf051	Various	Various	20050304	2005	275,000,000	-	0.00%
bal5boca	Boca Portfolio	MU	20050317	2005	700,000,000	-	0.00%
ml05ggp1	GGP 13 Affiliates	RT	20050321	2005	417,400,000	-	0.00%
gs05rock	Rockefeller Center	OF	20050526	2005	1,685,000,000	-	0.00%
ml05gn1	Battery Park - Gateway	MF	20050531	2005	94,229,700	-	0.00%
cci051	Tower Sites	Various	20050608	2005	1,900,000,000	-	0.00%
bs05afr1	Various	MU	20050615	2005	304,000,000	-	0.00%
fb20051	1345 Avenue of the Am	OF	20050825	2005	981,000,000	-	0.00%
ball5esh	Various	Various	20051005	2005	2,520,000,000	-	0.00%
balleshd	Various	Various	20051005	2005	2,520,000,000	-	0.00%
116605c6	1166 Avenue of the Am	OF	20051102	2005	475,000,000	-	0.00%
twhotel	Various	LO	20060104	2006	425,000,000	930,513	0.22%
cs06oma	mezzanine loan	OF	20060210	2006	415,150,330	-	0.00%
ball6277	Mezzanine loan	OF	20060215	2006	200,000,000	-	0.00%
bal06esh	#N/A	#N/A	20060224	2006	180,500,000	-	0.00%
com6cnl2	CNL Hotel & Resorts, In	LO	20060227	2006	1,000,000,000	-	0.00%
tower061	Various	Various	20060228	2006	1,550,000,000	-	0.00%
ball6laq	La Quinta	Various	20060420	2006	2,260,000,000	-	0.00%
cs06hc1	Various	HC	20060427	2006	1,200,000,000	-	0.00%
tstar061	The Timberlands	OT	20061030	2006	800,000,000	-	0.00%
cci061	Tower Sites	Various	20061129	2006	1,550,005,000	-	0.00%
ftst64ts	Four Times Square (The	Various	20061219	2006	566,123,000	-	0.00%
amt071	Tower Sites	Various	20070504	2007	1,750,000,000	-	0.00%
gtp071	Tower Sites	Various	20070525	2007	550,250,000	-	0.00%
gs07eop	EOP Portfolio	MU	20070619	2007	7,407,651,391	-	0.00%
wb07esh	Extended StayAmerica	LO	20070828	2007	4,100,000,000	243,885,592	5.95%
ddr09dd1	Note A Component	RT	20091125	2009	400,000,000	-	0.00%
ball9fdg	FLAGLER DEVELOPMEN	MU	20091215	2009	460,000,000	-	0.00%
jpm09iw	IWEST Portfolio	RT	20091223	2009	500,000,000	-	0.00%
obp10obp	Bank of America Tower	OF	20100708	2010	650,000,000	-	0.00%
vornado1	VNO Portfolio-A2FX	RT	20100818	2010	660,000,000	-	0.00%
jp10cntr	Centro Portfolio	RT	20100913	2010	484,625,882	-	0.00%
jp10cntm	Centro Portfolio Mezz	RT	20100913	2010	89,000,000	-	0.00%
ballhltn	Hilton Loan	LO	20101105	2010	8,264,270,325	-	0.00%
esa10esh	ESH Portfolio	LO	20101123	2010	2,000,000,000	-	0.00%
acr10art	ART Portfolio-A1	WH	20101215	2010	600,000,000	-	0.00%
gs11alf	Sunrise Assisted Living I	HC	20110317	2011	325,000,000	-	0.00%
ballfshn	Fashion Centre at Penta	RT	20110714	2011	410,000,000	-	0.00%
com11thl	Various	LO	20110728	2011	975,000,000	-	0.00%
jpm11cch	City Center Hotel Portfc	LO	20110808	2011	425,000,000	-	0.00%
wf11bxr	Mortgage Loan	RT	20110818	2011	1,000,000,000	-	0.00%
jpm11pls	Palisades Center	RT	20111221	2011	374,601,594	-	0.00%
com12w57	9 West 57th Street	OF	20120301	2012	625,000,000	-	0.00%

APPENDIX 4: Cumulative Loss Rates and Loss Severities

bal12osi	Various	Various	20120327	2012	324,800,000	-	0.00%
jp127wtc	7 World Trade Center	OF	20120405	2012	125,000,000	-	0.00%
fmbt12fb	Fontainebleau Miami B	LO	20120416	2012	412,000,000	-	0.00%
gs12aloh	Ala Moana	RT	20120514	2012	1,400,000,000	-	0.00%
jp12wldn	Walden Galleria	RT	20120530	2012	270,000,000	-	0.00%
jp12hsbc	HSBC Tower - 452 Fifth .	OF	20120725	2012	300,000,000	-	0.00%
gs12shop	The Grand Canal Shopp	RT	20120806	2012	625,000,000	-	0.00%
ms12star	North Star Mall	RT	20120816	2012	340,000,000	-	0.00%
bal12cmz	Clarion Portfolio	LO	20120912	2012	165,000,000	-	0.00%
bal12clr	Clarion Portfolio	LO	20120925	2012	335,000,000	-	0.00%
comm12lt	Westroads Mall	RT	20121004	2012	259,000,000	-	0.00%
motel6	MOTEL 6	LO	20121113	2012	1,050,000,000	-	0.00%
bb12show	Fashion Show Mall	RT	20121114	2012	835,000,000	-	0.00%
vn126ave	1290 Avenue of the Am	OF	20121129	2012	950,000,000	-	0.00%
jpm12phh	Palmer House Hilton	LO	20121211	2012	175,000,000	-	0.00%
bamlpark	101 Park Avenue	OF	20121213	2012	300,000,000	-	0.00%
gs12tmsq	One Time Square	RT	20121219	2012	208,000,000	-	0.00%
com12mvp	MVP Portfolio	LO	20121220	2012	294,706,326	-	0.00%
gs12bwtr	Bridgewater Commons	RT	20121221	2012	300,000,000	-	0.00%
qc13qc	Queens Center	RT	20130129	2013	600,000,000	-	0.00%
esa13efl	ESH 2013-ESA - Series Fl	LO	20130212	2013	350,000,000	-	0.00%
esa13es5	ESH 5Yr Fixed	LO	20130212	2013	350,000,000	-	0.00%
esa13es7	ESH 7Yr Fixed	LO	20130212	2013	1,820,000,000	-	0.00%
esa13esm	ESH Mezz A Non-Free P	LO	20130212	2013	500,000,000	-	0.00%
gs13kyo	Non-PK A	LO	20130215	2013	1,100,000,000	-	0.00%
rbs13smv	The Shops at Mission Vi	RT	20130221	2013	295,000,000	-	0.00%
gs13king	Kings Plaza	RT	20130225	2013	498,503,359	-	0.00%
ms13wlsr	Wilshire Courtyard	OF	20130227	2013	193,000,000	-	0.00%
slg13bwa	1515 Broadway	MU	20130306	2013	900,000,000	-	0.00%
ms13altm	Altamonte Mall	RT	20130314	2013	160,000,000	-	0.00%
cgc13smp	Santa Monica Place	RT	20130320	2013	239,147,293	-	0.00%
lcc13gcp	Grand Central Plaza	OF	20130321	2013	275,000,000	-	0.00%
com13gam	Green Acres Mall	RT	20130321	2013	324,420,483	-	0.00%
wf13120b	120 Broadway	OF	20130328	2013	310,000,000	-	0.00%
cg13vno	666 Fifth Avenue	RT	20130328	2013	390,000,000	-	0.00%
gs13nyc5	Manhattan Collection	LO	20130328	2013	410,000,000	-	0.00%
com13wwp	Worldwide Plaza	OF	20130328	2013	710,000,000	-	0.00%
del13hdc	Hotel del Coronado	LO	20130411	2013	285,000,000	-	0.00%
del13hdm	Hotel del Coronado Me	LO	20130411	2013	115,000,000	-	0.00%
com13sfs	Scottsdale Fashion Squa	RT	20130411	2013	525,000,000	-	0.00%
ballwbrk	Willowbrook Mall	RT	20130418	2013	360,000,000	-	0.00%
gs13pemb	Pembroke Lakes Mall	RT	20130423	2013	260,000,000	-	0.00%
wf13btc	Bergen Town Center	RT	20130425	2013	300,000,000	-	0.00%
cgc13375	375 Park Avenue	OF	20130529	2013	782,750,000	-	0.00%
jp13jwrz	Grande Lakes Desert Ri	LO	20130529	2013	510,000,000	-	0.00%
jp13jwmz	Grande Lakes Desert Ri	LO	20130529	2013	294,497,467	-	0.00%

APPENDIX 4: Cumulative Loss Rates and Loss Severities

com13thl	Tharaldson Portfolio A2	LO	20130627	2013	775,000,000	-	0.00%
jp13acmz	Americold Cold Storage	IN	20130725	2013	70,000,000	-	0.00%
cg13breh	BRE Select Hotels Corp	LO	20130725	2013	600,000,000	-	0.00%
stw13fv1	Red Roof Inn Hotel Port	LO	20130808	2013	199,040,632	-	0.00%
jpm13wt	Willis Tower (A-3-A-2-B	OF	20130808	2013	91,834,644	-	0.00%
jpm13alc	ALC Portfolio	HC	20130821	2013	250,000,000	-	0.00%
com13300	300 Park Avenue	OF	20130827	2013	485,000,000	-	0.00%
bb13tysn	Tysons Galleria Mall	RT	20130829	2013	325,000,000	-	0.00%
bhp13bo	Boca Hotel Portfolio	LO	20130926	2013	425,000,000	-	0.00%

Source: Trepp

APPENDIX 5: SBSC and Corporate Debt Rating Transition Comparison

CMBS Single Asset/Single Borrower Lifetime Transition Matrices										
	Current Rating									
Orig Rating	Aaa (sf)	Aa (sf)	A (sf)	Baa (sf)	Ba (sf)	B (sf)	Caa (sf) / below	Total	Count	Wtd Avg Duration (Yrs)
Aaa (sf)	95%	3%	1%	0%	1%	0%	0%	100%	271	4.7
Aa (sf)	36%	53%	4%	3%	1%	2%	1%	100%	174	4.9
A (sf)	24%	14%	53%	2%	4%	1%	2%	100%	169	5.0
Baa (sf)	18%	5%	13%	56%	5%	2%	2%	100%	189	4.3

Source: Moody's Investors Service. Data as of February 2013

Total Global Corporate Debt Ratings Transitions -- Average Five-Year Letter Rating Migration Rates, 1970-2012*

From/To	Aaa	Aa	A	Baa	Ba	B	Caa	Ca-C	WR	Default
Aaa	52.027%	23.121%	5.208%	0.353%	0.307%	0.037%	0.037%	0.000%	18.817%	0.093%
Aa	2.881%	46.071%	20.953%	3.663%	0.681%	0.209%	0.057%	0.016%	25.172%	0.296%
A	0.195%	7.685%	50.245%	14.327%	2.618%	0.825%	0.171%	0.006%	23.250%	0.678%
Baa	0.180%	1.061%	12.145%	46.836%	8.641%	2.752%	0.534%	0.073%	26.159%	1.620%
Ba	0.041%	0.165%	2.040%	11.680%	26.464%	10.896%	1.395%	0.110%	39.219%	7.991%
B	0.032%	0.046%	0.265%	1.665%	6.531%	21.995%	5.079%	0.635%	44.552%	19.199%
Caa	0.000%	0.000%	0.022%	0.579%	1.685%	7.411%	9.226%	1.049%	43.724%	36.305%
Ca-C	0.000%	0.000%	0.000%	0.000%	0.000%	2.156%	1.848%	2.640%	41.663%	51.694%

*Last Cohort formed on 1/1/2008
Source: Moody's Investors Service

APPENDIX 6: QCRE Loan Analysis - Proposed Rule vs. CREFC Proposal

Trepp Public Conduit Universe

Reproposal Parameters: MF amort. 30y All other amort. 25y. 65 LTV. 1.5 DSCR (1.25 MF, 1.7 hospitality), 10+ yr Loan Term, No IO

							All				Qualified			
Vintage	**Total Count**	**Total Sec. Bal.**	**Qualified Count**	**% By Count**	**Qualified Sec. Bal.**	**% By Balance**	**Ever 90+**	**Ever 90+ %**	**Loss Amount**	**Cum. Loss %**	**Ever 90+**	**Ever 90+ %**	**Cum. Loss**	**Cum. Loss %**
1997	2,996	17,109,211,368	293	9.78%	1,109,357,933	6.48%	2,522,504,977	14.74%	565,545,998	3.31%	147,318,677	13.28%	21,928,085	1.98%
1998	8,435	46,206,359,955	880	10.43%	3,961,926,191	8.57%	4,896,008,145	10.60%	1,235,322,981	2.67%	152,952,107	3.86%	37,008,821	0.93%
1999	6,898	35,253,064,849	678	9.83%	2,609,046,966	7.40%	4,933,655,004	13.99%	1,114,021,272	3.16%	106,135,350	4.07%	17,015,561	0.65%
2000	3,865	22,241,634,274	401	10.38%	1,608,700,981	7.23%	4,160,180,740	18.70%	1,021,550,677	4.59%	107,085,633	6.66%	15,402,380	0.96%
2001	4,326	30,478,177,066	435	10.06%	2,037,174,211	6.68%	5,705,600,954	18.72%	1,352,776,368	4.44%	116,187,944	5.70%	25,702,275	1.26%
2002	4,100	33,091,693,298	443	10.80%	2,347,035,811	7.09%	4,581,375,638	13.84%	1,003,954,484	3.03%	114,795,023	4.89%	6,567,663	0.28%
2003	5,885	55,843,173,315	751	12.76%	3,703,460,954	6.63%	6,335,107,926	11.34%	939,448,184	1.68%	165,224,202	4.46%	27,665,123	0.75%
2004	6,694	79,389,101,101	564	8.43%	2,938,183,491	3.70%	9,483,808,177	11.95%	1,508,610,940	1.90%	82,167,203	2.80%	18,005,523	0.61%
2005	10,695	143,562,326,568	796	7.44%	4,321,088,482	3.01%	23,820,749,182	16.59%	4,019,031,941	2.80%	174,390,700	4.04%	57,288,855	1.33%
2006	11,921	162,824,533,258	525	4.40%	2,838,353,605	1.74%	33,475,622,956	20.56%	6,259,882,627	3.84%	78,216,664	2.76%	14,757,286	0.52%
2007	11,876	191,791,869,757	267	2.25%	1,449,046,164	0.76%	50,974,521,156	26.58%	6,269,466,456	3.27%	66,573,184	4.59%	6,959,651	0.48%
2008	819	10,707,465,072	13	1.59%	45,033,361	0.42%	2,313,358,236	21.61%	572,372,282	5.35%	5,356,623	11.89%	-	0.00%
2010	219	5,384,767,165	14	6.39%	567,113,511	10.53%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2011	980	24,747,173,352	40	4.08%	302,502,681	1.22%	28,707,602	0.12%	-	0.00%	-	0.00%	-	0.00%
2012	1,735	32,164,603,817	153	8.82%	1,682,818,203	5.23%	2,435,549	0.01%	-	0.00%	-	0.00%	-	0.00%
2013	2,041	37,633,927,633	187	9.16%	2,044,021,128	5.43%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
Grand Total	**83,485**	**928,429,081,848**	**6,440**	**7.71%**	**33,564,863,674**	**3.62%**	**153,233,636,243**	**16.50%**	**25,861,984,209**	**2.79%**	**1,316,403,310**	**3.92%**	**248,301,223**	**0.74%**

Trepp Public Conduit Universe

CRE Finance Council Proposal : 30 yr AM; no maturity term; 1.5 DSCR (1.25 for multifamily; 1.7 for hospitality); 65 LTV (IO Loans LTV <=50)

							All				Qualified			
Vintage	**Total Count**	**Total Sec. Bal.**	**Qualified Count**	**% By Count**	**Qualified Sec. Bal.**	**% By Balance**	**Ever 90+**	**Ever 90+ %**	**Loss Amount**	**Cum. Loss %**	**Ever 90+**	**Ever 90+ %**	**Loss Amount**	**Cum. Loss %**
1997	2,996	17,109,211,368	365	12.18%	1,728,875,121	10.10%	2,522,504,977	14.74%	565,545,998	3.31%	169,207,804	9.79%	23,752,913	1.37%
1998	8,435	46,206,359,955	1,141	13.53%	7,320,245,854	15.84%	4,896,008,145	10.60%	1,235,322,981	2.67%	247,654,618	3.38%	53,005,898	0.72%
1999	6,898	35,253,064,849	970	14.06%	4,746,470,321	13.46%	4,933,655,004	13.99%	1,114,021,272	3.16%	225,528,160	4.75%	31,462,425	0.66%
2000	3,865	22,241,634,274	623	16.12%	3,594,660,183	16.16%	4,160,180,740	18.70%	1,021,550,677	4.59%	208,876,525	5.81%	39,326,987	1.09%
2001	4,326	30,478,177,066	712	16.46%	6,075,803,458	19.93%	5,705,600,954	18.72%	1,352,776,368	4.44%	398,431,455	6.56%	45,860,010	0.75%
2002	4,100	33,091,693,298	773	18.85%	7,085,994,969	21.41%	4,581,375,638	13.84%	1,003,954,484	3.03%	630,894,684	8.90%	186,357,139	2.63%
2003	5,885	55,843,173,315	1,356	23.04%	15,674,888,916	28.07%	6,335,107,926	11.34%	939,448,184	1.68%	847,871,956	5.41%	91,447,599	0.58%
2004	6,694	79,389,101,101	1,244	18.58%	17,927,783,610	22.58%	9,483,808,177	11.95%	1,508,610,940	1.90%	1,336,861,882	7.46%	88,227,083	0.49%
2005	10,695	143,562,326,568	1,694	15.84%	22,000,462,723	15.32%	23,820,749,182	16.59%	4,019,031,941	2.80%	1,249,188,794	5.68%	96,681,192	0.44%
2006	11,921	162,824,533,258	1,384	11.61%	18,317,383,907	11.25%	33,475,622,956	20.56%	6,259,882,627	3.84%	1,038,413,275	5.67%	83,173,445	0.45%
2007	11,876	191,791,869,757	1,040	8.76%	13,412,659,019	6.99%	50,974,521,156	26.58%	6,269,466,456	3.27%	806,297,590	6.01%	50,324,606	0.38%
2008	819	10,707,465,072	57	6.96%	413,581,522	3.86%	2,313,358,236	21.61%	572,372,282	5.35%	156,041,190	37.73%	29,807,123	7.21%
2010	219	5,384,767,165	94	42.92%	2,901,375,590	53.88%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
2011	980	24,747,173,352	254	25.92%	6,710,276,224	27.12%	28,707,602	0.12%	-	0.00%	-	0.00%	-	0.00%
2012	1,735	32,164,603,817	456	26.28%	6,760,476,941	21.02%	2,435,549	0.01%	-	0.00%	-	0.00%	-	0.00%
2013	2,041	37,633,927,633	586	28.71%	9,934,609,113	26.40%	-	0.00%	-	0.00%	-	0.00%	-	0.00%
Grand Total	**83,485**	**928,429,081,848**	**12,749**	**15.27%**	**144,605,547,471**	**15.58%**	**153,233,636,243**	**16.50%**	**25,861,984,209**	**2.79%**	**7,315,267,934**	**5.06%**	**819,426,419**	**0.57%**

APPENDIX 7: Loan Performance by Term

Trepp Public Conduit Universe: All Loan Performance by Loan Term			
Vintage	5 - yr. Cum. Loss %	7 - yr. Cum. Loss %	10+ - yr. Cum. Loss %
1997	0.66%	1.72%	3.52%
1998	4.80%	1.59%	2.70%
1999	2.51%	1.92%	3.23%
2000	1.96%	1.93%	4.75%
2001	0.32%	0.94%	4.80%
2002	0.77%	1.19%	3.32%
2003	1.24%	1.12%	1.83%
2004	1.32%	2.04%	1.99%
2005	2.65%	2.60%	2.86%
2006	4.52%	3.06%	3.79%
2007	3.95%	2.16%	3.22%
2008	1.20%	6.09%	5.78%
2010	0.00%	0.00%	0.00%
2011	0.00%	0.00%	0.00%
2012	0.00%	0.00%	0.00%
2013	0.00%	0.00%	0.00%
Grand Total	**2.61%**	**2.07%**	**2.87%**

APPENDIX 8: Interest-Only Loan Performance

Trepp Public Conduit Universe: All IO Loans			
Vintage	Total Count	Total Sec. Bal.	Cum. Loss %
1997	46	534,329,092	0.74%
1998	112	2,884,794,990	0.83%
1999	122	2,553,497,312	1.97%
2000	133	1,761,049,270	1.14%
2001	216	3,164,922,998	2.32%
2002	220	3,278,040,729	1.18%
2003	615	14,386,572,012	1.03%
2004	1,468	37,022,087,464	0.94%
2005	4,481	94,986,573,794	2.45%
2006	6,389	122,776,731,711	3.47%
2007	7,858	166,019,657,689	3.04%
2008	518	8,640,371,879	5.28%
2010	32	713,433,633	0.00%
2011	163	6,085,919,572	0.00%
2012	320	10,988,969,236	0.00%
2013	494	17,985,875,618	0.00%
Grand Total	**23,187**	**493,782,827,000**	**2.59%**

APPENDIX 9:
Performance of Major vs. All Markets

Index	Peak to Trough	Peak to Current	Percentage Peak-to-Trough Loss Recovered	Peak Month	Trough Month
Apartment - Major	-23.6%	11.8%	150.2%	Dec-07	Dec-09
Apartment	-38.9%	-0.5%	98.8%	Dec-07	Dec-09
Office CBD - Major	-46.9%	-4.9%	89.5%	Dec-07	Sep-09
Office CBD	-49.6%	-6.6%	86.8%	Dec-07	Sep-09
Major Markets (All-Property)	-38.1%	-5.7%	85.1%	Dec-07	Nov-09
Apartment - Non-Major	-47.3%	-8.8%	81.5%	Sep-07	Dec-09
National All-Property	-40.2%	-14.9%	62.8%	Dec-07	Dec-09
Office	-46.0%	-18.1%	60.7%	Dec-07	Nov-09
Retail - Major	-38.3%	-15.7%	59.1%	Sep-07	Jun-10
Core Commercial	-40.6%	-19.9%	51.0%	Nov-07	Dec-09
Office CBD - Non-Major	-50.4%	-25.9%	48.6%	Dec-07	Sep-09
Non-Major Markets (All-Property)	-42.1%	-22.5%	46.6%	Oct-07	Dec-09
Office Suburban - Major	-46.4%	-25.7%	44.6%	Dec-07	Jun-10
Retail	-42.4%	-23.5%	44.6%	Aug-07	Sep-10
Industrial - Major	-34.1%	-20.3%	40.4%	Dec-07	Mar-10
Retail - Non-Major	-43.9%	-29.5%	32.9%	Sep-07	Sep-10
Office Suburban	-44.7%	-30.4%	32.1%	Oct-07	Jul-10
Industrial	-33.1%	-25.9%	21.6%	Jan-08	Jan-10
Office Suburban - Non-Major	-43.5%	-36.0%	17.2%	Dec-07	Dec-09
Industrial - Non-Major	-33.8%	-32.1%	5.0%	Mar-08	Dec-10

APPENDIX 10: Senior-Subordinate Structure Analysis

Risk Retention - Senior-Subordinate Structure Analysis

Conclusion: The challenge posed by the new Proposed Rule is one of capacity in the marketplace. Today, the B-Piece investor community typically purchases 6 or 7-percent of the par value of a deal at a discount that translates into a typical investment of 2.5 to 3-percent of the fair value of the deal proceeds. Under the proposal, B-Piece Investors will need to raise the capital to consume the expanded 5-percent fair value retention requirement. That level of retention will mean that bonds higher in the waterfall – bonds historically rated BBB-, BBB, and potentially even A- – will be swept into the EHRI retention position.

Description	**Scenario 1** Approximate levels based on recently executed transactions	**Scenario 2** Credit bonds subject to RR price at B-Piece Yield	**Scenario 3** Credit bonds subject to RR price at 50% B-Piece Spread
Par	$100.0	$100.0	$100.0
Gross Profit	3.00%	3.00%	3.00%
Market Value	$103.0	$103.0	$103.0
Req. Risk Retention	$5.2	$5.2	$5.2
B-Piece Size	$6.656	$6.656	$6.656
BBB- Size	$5.188	$5.188	$5.188
A Size	$3.687	$3.687	$3.687
AA Size	$6.438	$6.438	$6.438
10-year Swap	2.75	2.75	2.75
B-Piece (bond equivalent yield)	18.000%	18.000%	18.000%
BBB- Spread	425	1,525	650
A Spread	275	475	275
AA Spread	185	185	185
B-Piece Coupon (%)	4.360	4.360	4.360
BBB- Coupon (%)	4.811	4.811	4.811
A Coupon (%)	4.811	4.811	4.811
AA Coupon (%)	4.811	4.811	4.811
B-Piece Px	$0.385	$0.385	$0.385
BBB- Px	$0.849	$0.406	$0.720
A Px	$0.952	$0.819	$0.952
AA Px	$1.020	$1.020	$1.020
B-Piece Fair Value	$2.6	$2.6	$2.6
BBB- Fair Value	$4.4	$2.1	$3.7
A Fair Value	$3.5	$3.0	$3.5
AA Fair Value	$6.6	$6.6	$6.6
Total Fair Value	$17.0	$14.3	$16.4
% B-Piece Purchased	100.0%	100.0%	100.0%
% BBB- Purchased	58.8%	100.0%	69.3%
% A Purchased	0.0%	16.0%	0.0%
% AA Purchased	0.0%	0.0%	0.0%
Total Thickness Purchased	**9.7%**	**12.4%**	**10.3%**
AAA Thickness	78.031	78.031	78.031
AAA Px	$1.000	$1.000	$1.000
Implied IO Price	$0.079	$0.107	$0.086
Assumed IO BEY	5.000%	5.000%	5.000%
Incremental Coupon		0.354%	0.085%

APPENDIX 11: CREFC IG INVESTOR SURVEY RESULTS

CREFC IG Investor Survey Results
October 2013

Survey Introduction: The below CREFC surveys were conducted throughout October 2013. CREFC staff and the leadership of the CREFC IG Bondholders Forum crafted and approved background information and each question. All surveys were sent to CREFC IG Bondholders Forum Members and all CREFC members who were tagged as "IG Investors" in CREFC's database. Respondents include investors from large life insurance companies, banks, mutual funds, pension funds, and private investors, among others.

Question #	CREFC Survey #1 on SASB, Senior / Sub Structure, and OA-SS Removal Quorum - October 1, 2013	Number of Answers	Yes %	No %	Neutral %	
1	f	31	77.4%	16.1%	6.5%	
2	Pari-Passu Structure Required when Two B-Piece Buyers Hold Horizontal Risk **Question: Are you supportive of additional flexibility so that two B-Piece Buyers have the option of using a senior/sub structure in addition to the pari-passu structure when they are holding the horizontal risk retention piece?**	31	67.7%	19.4%	12.9%	
3A	5% Voting Quorum to Replace Special Servicer Under the proposed rule, the Operating Advisor has the ability to recommend the replacement of the Special Servicer if it concludes both: (1) that the Special has failed to comply with any standard required of it, and (2) that removal would be in the best interest of the investors as a collective whole. Once the recommendation is made, bondholders are entitled to a vote. For the vote to count, there is a 5% quorum requirement. If that quorum requirement is satisfied, then, to replace the Special Servicer a majority of those voting (based on outstanding principal balance of all ABS interests) must vote for replacement. Here is a step-by-step explanation: 1) OA recommends replacement of the Special Servicer 2) Deal documents are expected to require notice of a vote to be provided to all bondholders for their participation in the vote 3) At least 5% of the outstanding principal balance of all ABS interests are needed to vote 4) A majority of the those voting is needed to approve the replacement of the Special Servicer **Question: Do you think 5% is the right voting quorum threshold?**	30	16.7%	56.7%	26.7%	
		Number of Answers	Quorum of 10%	Quorum of 15%	Quorum of 20%	Any quorum threshold over 10% as long as a minimum of three investors voting?
3B	**Question: If NO in Question #3, do you support any of the following?:**	20	15.0%	20.0%	45.0%	30.0%

Question #	CREFC Survey #2 on OA-SS Removal Quorum and OA Issues - October 16, 2013	Number of Answers	Yes %		No %
1A	**Question: Do you agree that a quorum vote must include a minimum of three investors?**	27	92.6%		7.4%
		Number of Answers	10%	15%	20%
1B	**Question: If YES to Question #1 and assuming at least three investors are voting, which do you think is the appropriate quorum threshold percentage?**	26	26.9%	23.1%	50.0%
		Number of Answers	Yes %		No %
2	Potential Conflicts. The re-proposal requires the OA to be independent with respect to the transaction parties. However, Operating Advisor firms often have affiliates or subsidiaries that serve as underwriters to issuers, diligence providers to B-Piece buyers, and consultants to loan borrowers. Engaging in these other businesses on an ongoing basis naturally creates conflicts of interest for the OA role. **Question: In order to avoid potential ongoing conflicts of interest with transaction parties, should the OA be prohibited from have any business services beyond the OA responsibilities with transaction parties on other deals? In other words, do IG bondholders believe the OA should be a fully independent party in the CMBS business?**	27	66.7%		33.3%
3	Compensation. It is widely accepted that the OA is undercompensated and the current fixed strip leaves even less compensation for the OA when their role becomes most critical. **Quetion: Should CREFC make a general comment in its response that the OA compensation should be in alignment with the financial interests and incentives of the OA and the certificate holders?**	27	59.3%		40.7%
4	OA Liability. Some OA's have commented that the indemnification from liability for their role needs strengthening to ensure their efficacy. **Question: Should CREFC advocate in its response for strengthened liability protections for OAs?**	27	63.0%		37.0%

Question #	CREFC Survey #3 on QCRE Parameters - October 22, 2013	Number of Answers	Yes %	No %
1	**Question: Do you think the QCRE definition should be changed from that defined in the re-proposal? In other words, do you think the share of loans that qualify for QCRE exemption should be allowed to rise from proposed level?**	29	69.0%	31.0%
2	**Question: If you believe that the share of CMBS loans that qualify for a QCRE loan exemption should be allow to rise from proposed levels, please tell us if you agree with following methods of allowing more loans to reach the exemption. Do you think that the QCRE loan definition should be changed to include those loans with 30 year amortization instead of limiting it to loans with 25 year amortization schedules?**	24	66.7%	33.3%
3	**Question: Do you think that the QCRE loan definition should be changed to allow loans of all maturity terms qualify for exemption instead of limiting the exemption to loans of 10 year loan terms or longer?**	24	75.0%	25.0%
4	**Question: Do you think that interest only loans of any maturity term but with LTV ratios of 50% or less should be exempt from risk retention?**	23	73.9%	26.1%

APPENDIX 12: Member List

CRE Finance Council Member Companies

Level 1

AIG Investments
Alston & Bird LLP
Banc of America Securities
Barclays Capital Real Estate Inc
Berkadia Commercial Mortgage LLC
Berkeley Point Capital
BlackRock
Bloomberg L.P.
Bryan Cave LLP
C-III Capital Partners
Cadwalader, Wickersham & Taft LLP
CBRE Capital Markets, Inc.
CIBC World Markets Corp.
Citigroup Global Markets
Cleary, Gottlieb, Steen & Hamilton LLP
Clifford Chance US LLP
Cornerstone Real Estate Advisers LLC
Credit Suisse
CWCapital
DBRS, Inc.
Dechert LLP
Deloitte & Touche LLP
Dentons US LLP
Deutsche Bank Securities Inc.
DLA Piper LLP (US)
Eastdil Secured
Ernst & Young LLP
Fannie Mae
Fidelity Management & Research Co.
Fitch Ratings
Freddie Mac
GE Real Estate
GEMSA Loan Services, LP
Goldman, Sachs & Co.
J.P. Morgan
John Hancock Financial Services
Jones Lang LaSalle
Kaye Scholer LLP
KeyBank Real Estate Capital
Kilpatrick Townsend & Stockton LLP
LNR Property Corporation
Macquarie Bank Ltd.
Meridian Capital Group LLC
Metropolitan Life Insurance Co.
Moody's Investors Service
Morgan Stanley
Morningstar Credit Ratings, LLC
New York Life Investment Management
Nomura Securities International, Inc.
ORIX USA Corporation
Pacific Life Insurance Company
PNC Real Estate
PPM America, Inc.
PricewaterhouseCoopers LLP
Principal Global Investors
Proskauer Rose, LLP
Prudential Mortgage Capital Company
Royal Bank of Scotland
Schulte Roth & Zabel LLP
Seyfarth Shaw LLP
Sidley Austin LLP
Situs
Standard & Poor's Ratings Services
Starwood Capital Group
Teachers Insurance and Annuity Association
Trepp, LLC
U.S. Bank, NA
UBS Investment Bank
Venable LLP
Walker & Dunlop
Wells Fargo

Level 2

AEGON USA Investment Management, LLC
Allstate Insurance Company
Amherst Securities Group LP
Anderson, McCoy & Orta, P.C.
Andrews Kurth LLP
Arbor Commercial Mortgage, LLC
Auction.com
Ballard Spahr LLP
Barnes & Thornburg LLP
Bilzin Sumberg Baena Price & Axelrod, LLP
Brookfield Real Estate Financial Partners LLC
CCRE
DebtX
Duane Morris LLP
Genworth Financial
H/2 Capital Partners
Hunt Realty Investments, Inc.
Huntington National Bank
ING Investment Management
Intex Solutions, Inc.
IStar Financial
Kelley Drye & Warren, LLP
Kroll Bond Ratings
MBIA Insurance Corporation
McKenna Long & Aldridge, LLP
McKinley, Inc.
Morrison & Foerster LLP
Natixis Real Estate Capital
NCB, FSB/ A National Cooperative Bank Company
NorthStar Realty Finance Corp.
Oaktree Capital Management, L.P.
Polsinelli PC
Real Capital Analytics
Regions Financial Corp
Rockport
RR Donnelley
Shearman & Sterling LLP
Stinson Morrison Hecker LLP
Trimont Real Estate Advisors, Inc.
White and Williams LLP
Willkie Farr & Gallagher
Winstead PC

Level 3

1st Service Solutions
Aareal Capital Corp.
Accenture

CRE Finance Council Member Companies

Akin Gump Strauss Hauer & Feld LLP
Allen & Overy LLP
AllianceBernstein L.P.
Alvarez & Marsal Real Estate Advisory Services, LLC
American Capital Strategies, Ltd.
Andrascik & Tita LLC
Annaly Commercial Real Estate Group
Apollo Global Management
ARC Realty Finance Trust, Inc.
AREA Property Partners
Ares Management LLC
Assured Lender Services Inc.
Baker Donelson Bearman Caldwell & Berkowitz, P.C.
Bedrock Capital Associates LLC
Beech Street Capital, LLC
Beekman Advisors
Belgravia Capital
The Birdsey Group, LLC
The Blackstone Group
Brean Capital LLC
Brickman
Buchalter Nemer
Canopy Investment Advisors
CapitalSource
Carlton Fields
Cassin & Cassin LLP
Centerline Capital Group
CMBS.com
Cobb Partners
Cohen Financial
Cole Real Estate Investments
Colony Financial, Inc.
Cooper-Horowitz Inc.
CoStar - PPR
CPPIB Credit Investments Inc.
Craighead Law LLC
Crowell & Moring LLP
David L. Bonuccelli & Associates, Inc.
Duval & Stachenfeld LLP
Edwards Wildman Palmer LLP
Eightfold Real Estate Capital, L.P.
Ellington Management
Elliott Management Corporation
Exceder Real Estate Advisors, LLC
First Financial Network, Inc
Fox Rothschild LLP
FPL Advisory Group Co.
Frandzel Robins Bloom & Csato, LC
FTI Consulting
Goff Capital Partners
Greystone & Co.
GRS Group
Guggenheim Partners
Harbor Group Ltd
Haynes and Boone, LLP
Heitman, LLC
Hudson Realty Capital LLC
Hunneman Capital Group
Impact Community Capital LLC
Interactive Data
Invesco Real Estate
Investcorp International Inc.
Jefferies & Co.
JER Partners
Johnson Capital
K&L Gates LLP
Kasowitz, Benson, Torres, Friedman, LLP
Katten Muchin Rosenman LLP
Korn/Ferry International
KPMG LLP
KSL Capital Partners
Ladder Capital Finance
LEM Mezzanine, LLC
LoanCore Capital
Loeb & Loeb LLP
Lone Star, LLC
Lormax Stern Development Company, LLC
Lowenstein Sandler PC
Mayer Brown LLP
Mayersohn Law Group P.A.
MC Five Mile Capital Partners
McCarter & English, LLP
McCracken Financial Solutions Corp.
Mesa West Capital
Miller, Canfield, Paddock and Stone, P.L.C.
MKP Capital Management, L.L.C.
Morris, Manning & Martin, LLP
Newmark Grubb Knight Frank
Nixon Peabody LLP
O'Connor Cochran LLP
One William Street Capital Management, L.P.
Onyx Equities, LLC
Park Bridge Financial LLC
Paul Hastings LLP
PCCP
Pearlmark Real Estate Partners
Pentalpha Capital Group
Perkins Coie LLP
Pillar Financial, LLC
Pine River Capital
Prima Capital Advisors LLC
Prime Finance Partners
Promontory Interfinancial Network, Bank Assetpoint
Prudential Real Estate Investors
Putnam Investments
R.J. Finlay & Co.
RAIT Financial Trust
Raith Capital Partners
Redwood Trust, Inc.
Related Companies, LP
Resource Real Estate, Inc.
Rialto Capital Management
RLJ Lodging Trust
Rubin, Ehrlich & Buckley, P.C.
Sabal Financial Group LP
Seer Capital Management LP
Shorenstein Properties LLC
Sills Cummis & Gross PC
Spring Hill Capital Partners, LLC
Square Mile Capital Management, LLC
Stabilis Capital Management LP
Standish Mellon Asset Management

CRE Finance Council Member Companies

Stifel Nicolaus
StormHarbour Securities
Strategic Property Associates LLC
Summer Street Advisors, LLC
Sutherland, Asbill & Brennan LLP
T. Rowe Price Associates, Inc
Talmage, LLC
Thompson & Knight LLP
Thompson Hine LLP
Torchlight Investors
Townhouse Partners
TRIGILD
TriLyn LLC
Voit Real Estate Services
Walton Street Capital
Washington Holdings
Waterstone Asset Management
The Weitzman Group, Inc.
White Mountains Advisors LLC
Winston & Strawn LLP