CENTER FOR CAPITAL MARKETS COMPETITIVENESS
OF THE
UNITED STATES CHAMBER OF COMMERCE

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August 1, 2011

Mr. Alfred Pollard
General Counsel
U.S. Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Re: Proposed Rule on Credit Risk Retention

Dear Mr. Pollard:

The U.S. Chamber is the world's largest business federation representing more than 3 million businesses and organizations of every size, sector and region. Through our Center for Capital Markets Competitiveness, we have led efforts to modernize and strengthen outmoded regulatory systems, while advancing policies that ensure America's global leadership with capital markets that are the most fair, efficient, and innovative in the world. Ensuring an effective and vibrant capital formation system is essential to every business – from the smallest start-up to the largest enterprise.

The U.S. Chamber of Commerce appreciates the opportunity to comment on the March 29, 2011, proposed rule on credit risk retention ("Proposed Rule") jointly promulgated by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Finance Agency, and the Department of Housing and Urban Development (the "Regulators").

As you know, section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") requires the Regulators to prescribe rules that require securitizers to retain an economic interest in a material portion of the credit risk of the underlying securitized assets. We support the goals of section 941(b) of improving the alignment of interests among borrowers, issuers, and investors within the securitization chain. Credit risk retention is one mechanism that could help align such interests, but it is a policy approach that comes with inherent costs.

Fully functioning credit markets are necessary for economic growth and job creation. As such, the Chamber is concerned that certain aspects of the Proposed Rules may have a tremendous impact on the American consumer, American businesses and the American economy. Specifically, we are concerned that:

- The Premium Capture Cash Reserve Account creates a significant timing mismatch for commercial mortgage backed securities issuers;

- Underwriting standards proposed for Qualifying Commercial Loans narrows the exemption from risk retention requirements so greatly that it will be rendered meaningless;

- Collateralized Loan Obligations experienced very few aggregate losses during the financial crisis, and this fact has not been fully integrated into the rules;

- The very narrow underwriting standards proposed for Qualifying Auto Loans fail to provide any meaningful exemption from risk retention requirements for issuers of automobile asset-backed securities; and

- Real Estate Investment Trusts (REITs) face discrimination under the Proposal as loans to REITs have been excluded from the definition of a commercial real estate loan, while loans for the same purpose to entities with a different tax structure are included.

An appropriate resolution of these issues can assist in restoring credit flows to the market place with an even playing field to allow for regulation of the market place and appropriate risk taking.

Background

Securitization has become a vital component of our system of finance over the past two decades and now provides a critical source of funding alongside more traditional balance sheet lending. It is important to note that not all securitized products are the same – various asset classes are backed by different types of loans and have different structures and contrasting credit risk profiles. Uniform application of the rules to different products would heighten the risk that the rules could adversely affect credit availability. Therefore, it is important that the Regulators adopt rules that are closely tailored to the characteristics, risks, and benefits associated with each asset class.

Simply put, a one size fits all approach will make it difficult for regulators to effectively regulate the marketplace, while hampering the ability of customers to appropriately use the right securitization products. While an enhanced regulatory structure is an important goal, reforms must be proportionally balanced against their consequences. Below, we address specific concerns we have with certain asset classes that are critical to our members and the American economy.

Commercial Mortgage-Backed Securities ("CMBS")

Commercial real estate ("CRE") finance plays an essential role for American businesses. Specifically, portfolio lending, commercial mortgage backed securities ("CMBS") and equity are all funding mechanisms that businesses use to purchase office buildings, factories and storefronts that help create jobs and generate economic growth. The businesses the Chamber represents need options for funding their CRE needs, and CMBS fills this role. Considering the critical function that the CMBS market serves in commercial real estate, we must emphasize at the outset that the stakes in this rulemaking process are very high. As such, we have concerns with the Proposed Rule as it applies to CMBS.

We believe that the Proposed Rule should be modified to (1) take into account the unique nature of CMBS, (2) eliminate the Premium Capture Cash Reserve Account ("PCCRA"), and (3) allow for "third party" or b-piece retention in a form that both meets the intent of Dodd-Frank and is workable in the marketplace.

While we understand the goal of risk retention is to align incentives, the PCCRA steps far beyond the Regulators' mandate and fundamentally alters the economics of securitization. Specifically, the PCCRA creates a timing mismatch by forcing issuers to immediately absorb all the downside risk/losses associated with their interest rate exposure while requiring the issuer to wait years to recognize any potential profit for taking that risk. The PCCRA alone would severely shrink, if not eradicate, CMBS altogether.

Furthermore, we have concerns with the underwriting standards proposed for Qualifying Commercial Loans. Less than one-half of one percent of current loans would meet the proposed criteria to be considered a Qualifying Commercial Loan. Such a proposal fails to provide a meaningful standard for "high quality commercial loans," and therefore creates a meaningless exemption that would be useless in the marketplace. If the proposed rules were to be implemented, only lenders with the largest balance sheets would be able to create CMBS and have the capacity to hold 5% retained risk. Such a situation creates less competition in the marketplace, and therefore fewer funding choices for commercial borrowers.

If adopted in final form, the Proposed Rules would severely shrink CMBS as a funding mechanism for commercial mortgages. Ultimately, this would lead to fewer funding options for businesses, reduced credit availability, and higher borrowing costs. Consequently, the Proposed Rule would run counter to the Administration's goal for businesses to spend money and spur job growth.

Collateralized Loan Obligations ("CLOs")

Testifying before Congress earlier this month, Federal Reserve Chairman Bernanke cited "still-limited access to credit for some households and small businesses" as a headwind against the recovery of the U.S. economy.[1] Many of Mr. Bernanke's colleagues in the federal government and numerous market participants and commentators have also suggested that constricted credit markets are contributing to our country's economic problems.

For all American businesses, access to capital and the ability to borrow at reasonable rates is critical to growth and success. Collateralized loan obligations ("CLOs") are a vital funding mechanism and source of credit, especially for small- and medium-sized companies, many of whom are not large enough to access the corporate bond market. According to a report conducted by the Federal Reserve, the FDIC, and the OCC, in 2010 there were approximately $250 billion in syndicated commercial loans made to U.S. companies through CLOs.[2] A broad swath of corporate America participates in this market, including companies from the health care, energy, retail, entertainment, and telecommunications sectors, to name just a few.

Like the other asset classes mentioned in this letter, the CLO market performed largely as expected during the financial crisis. Unlike structured products based on

[1] Testimony of Federal Reserve Chairman Ben Bernanke, House Financial Services Committee hearing entitled, "Monetary Policy and the State of the Economy," July 13, 2011.

[2] "Credit Quality of the Shared National Credit Portfolio Improved in 2010," *Shared National Credit Review* (Sept. 28, 2010), available at http://www.federalreserve.gov/newsevents/press/bcreg/20100928a.htm .

subprime mortgages, which experienced considerable losses in recent years, investment grade CLO tranches experienced very few aggregate losses. This fact should be considered as Regulators work to finalize the Proposed Rule.

Businesses that rely upon the CLO market are essential components of the American economy. The CLO market enables these companies to create and preserve millions of American jobs. This is an obvious source of capital that simply cannot be impaired. Given the critical role that CLOs play as a source of funding for American businesses, it is essential that the Regulators modify the Proposed Rule so that CLOs are not subject to overly broad credit retention requirements.

Automobile Asset-Backed Securities ("Auto ABS")

We also have concerns with the Proposed Rule's prescriptions for automobile asset-backed securities ("Auto ABS"). We fear the exceptionally narrow underwriting standards proposed for Qualifying Auto Loans will fail to provide any meaningful exemption from the risk retention requirements, given that currently few, if any; consumer auto loans would meet this definition. The rule, as drafted, will ultimately harm American businesses – whether they are large auto manufacturers struggling to survive or the small business auto dealers whose numbers have already been decimated by the economic recession and its slow recovery.

We believe that the Proposed Rule fails to recognize the forms of risk alignment that automobile finance companies currently utilize. If adopted in final form, the Proposed Rule will adversely affect American businesses linked to the automobile industry, as reduced credit availability and higher borrowing costs percolate through the sales chain. Auto dealers will find it difficult, if not impossible, to fund their inventory of vehicles to be sold. Consumers will struggle to find financing options that allow them to acquire a vehicle at a reasonable interest rate. In turn, auto manufacturers will sell fewer cars and need fewer workers to build those cars. And on a macro level, this will contribute to the economic malaise that our nation is currently working through.

Real Estate Investment Trust ("REIT")

Finally, we are concerned that the broad exclusion of "a loan to a real estate investment trust (REIT)" from the definition of a "commercial real estate (CRE) loan" would effectively prevent any loan to a REIT from being considered a "qualifying CRE loan." Any loan to a REIT would thus be ineligible for an asset backed securitization seeking to qualify for reduced risk retention, simply because the borrower is a REIT. While some real estate related loans clearly have greater risk profiles than others, the right way to ensure the appropriate amount of credit risk is retained when these loans are securitized is to look at the fundamental attributes of the loan. Yet, the Proposed Rule would deny "qualifying" status to a well underwritten loan to a REIT, even if the exact same loan would be "qualifying" if the borrower is a non-REIT c-corporation, a partnership, or an individual.

Neither logic nor market data support what appears to be the Regulators' assertion that a loan is inherently more risky if the borrower has decided to operate its business in a way that is so focused on real estate that it is eligible to elect to be taxed as a REIT. To ensure that REITs are not arbitrarily penalized when they seek to finance their property with secured loans, we encourage the regulators to remove provision (2) (iii) from the definition of "Commercial real estate (CRE) loan" in §__.16, and to eliminate from the final rule any distinction between borrowers based solely on their tax election.

Conclusion

In conclusion, we urge the regulators to strike the appropriate balance between enhancing regulatory oversight and ensuring vibrant and liquid credit markets where borrowers can access loans at affordable rates. Furthermore, we believe that the rules should not be designed to discriminate based on an entity's tax structure. As currently drafted, the proposed rules could have adverse consequences upon businesses and consequently, economic growth and job creation. Accordingly, we respectfully request that these concerns be taken into account and that the Regulators engage in a dialogue with all stakeholders to avoid harmful, long-term unintended consequences.

Sincerely

David Hirschmann

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