United States Senate
WASHINGTON, DC 20510

December 20, 2013

The Honorable Shaun Donovan
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410-0500

The Honorable Edward Demarco
Acting Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

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

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

The Honorable Thomas Curry
Comptroller
Office of the Comptroller of the Currency
250 E Street, SW, Room 9048
Washington, DC 20219

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

Dear Ladies and Gentlemen:

We are writing in regard to your recently re-proposed rule to implement the risk retention requirements of Section 941 of the Dodd Frank Act [Credit Risk Retention, RIN 2501-AD53]. The re-proposal would require an asset backed security sponsor to retain at least 5% of any asset issued by that sponsor. Although the re-proposal improves upon your initial rulemaking effort in March 2011, we are concerned that certain provisions remain unworkable and not in keeping with the intention of Section 941.

Section 941 targeted the breakdown of the "originate to distribute" market for subprime mortgages. Today, the implementation of Section 941 seems to have expanded to a one-size-fits-all approach to regulating the securitization markets for diverse asset classes whose performance varied enormously during the financial crisis.

This one-size-fits-all approach is particularly detrimental to the asset class of open market Collateralized Loan Obligations (CLOs). CLOs are an important source of financing for non-investment grade companies in the U.S. Many of these U.S. companies (including emerging growth companies) rely on CLOs for the funds they need to expand operations or invest in new technologies. The CLO structure does not fit squarely within the framework originally contemplated in Section 941. CLOs are organized by investment managers and operate in a structure akin to mutual funds. They are not capitalized like banks and do not have the resources available to retain a 5% share of the structure as called for in the proposed rule. We are concerned that the application of a 5% risk retention to CLOs would eliminate the incentive to arrange or manage a CLO, and damage this important source of financing for American businesses.

Your August re-proposal attempts to address the application to CLOs by providing alternative forms of CLO risk retention. Specifically, the re-proposal introduces an alternative arranger risk retention option, under which an arranging bank could fulfill the requirements of Section 941 if it held a 5% share of a CLO "tranche." This retained interest would not be permitted to be hedged or sold until repayment, default or bankruptcy -- requiring instead that the arranger hold the interest on its balance sheet. This alternative, unfortunately, does not address the problem at hand and could ultimately result in unsafe and unsound banking practices, completely at cross-purposes with the goals of prudential regulation and Section 941.

Given the potential impact of Section 941 and the impediments it may create, we respectfully request that you continue to explore additional workable options for the CLO asset class described above, including a potential exercise of your exemptive authority under Section 941(e).

Thank you for your consideration and we look forward to your prompt response.

Sincerely,

Mike Crapo

Senator Mike Crapo

Mark Kirk

Senator Mark Kirk

Mike Johanns

Senator Mike Johanns

Pat Toomey

Senator Pat Toomey

Jerry Moran

Senator Jerry Moran