Consumers Union
Nonprofit Publisher
of Consumer Reports

February 12, 2010

Mr. Robert. E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Via email: http://www.FDIC.gov/regulations/laws/federal/notices.html.

Re: RIN # 3064-AD55-- Advance Notice of Proposed Rulemaking Regarding Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After March 31, 2010

Dear Secretary Feldman:

Consumers Union,[1] the nonprofit publisher of *Consumer Reports*, appreciates the opportunity to comment to the Federal Deposit Insurance Corporation (FDIC) Advanced Notice of Public Rulemaking (ANPR) regarding mortgage securitizations.

I. Summary

Consumers Union supports an action by the FDIC to require mortgage originators to bear the risk of originating and holding risky loans for 12 months before securitizing the loans and passing the risk to investors and ultimately to the FDIC. Requiring originators to keep the loan for a minimum period and retain a significant portion of the risk, such as 10 percent, creates stronger incentives for accurate underwriting. Consumers Union supports the concept proposed by the FDIC to institute compensation structures and adds a compensation timetable that spreads the payment of compensation to any party in connection with a mortgage loan over five years, with no more than five percent of the total compensation due payable at loan closing. Though not covered in the ANPR, Consumers Union recommends that the FDIC add requirements for mandatory timelines for loss mitigation to encourage timely determinations of borrowers' requests for loan modifications. Also not covered in the ANPR, Consumers Union recommends allowing servicers to suspend collection of payment to mitigate losses, but without an obligation for the servicer to make up the payments themselves to investors. Taken together, these measures should have the effect of minimizing unnecessary risks to borrowers, investors and the FDIC. They will also help eliminate loan originator incentives to "keep the fee and pass the risk" to others, a practice which has fueled rampant irresponsible lending, a significant factor in the mortgage market crisis.

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[1] Consumers Union of United States, Inc., publisher of *Consumer Reports*®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect Consumer welfare. Consumers Union's income is solely derived from the sale of *Consumer Reports*®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

II. Disclosures

In addition to increasing substantive enhancements for improving the quality of mortgages forming Residential Mortgage Loan Securitizations (RMBS), Consumers Union supports proposed requirements obligating the sponsor, issuing entity, and/or servicer, as appropriate to provide investors with information describing the financial assets, obligations, capital structure, compensation of relevant parties and relevant historical performance data. This approach will increase transparency and accountability surrounding Residential Mortgage Loan Securitizations (RMBS) obligations and shift incentives toward more responsible lending and away from quick and risky origination for the sake of earning substantial and immediate fees.

III. Documentation, Recordkeeping and Loss Mitigation

New rules should be put in place to give servicers managing loans subject to pooling and servicing agreements the authority to mitigate losses through loan modifications, principal write downs or other appropriate measures to maximize the net present value of a mortgage while taking action to avoid unnecessary foreclosures. Servicers should be required to commence action to mitigate losses through loan modifications or other appropriate measures no later than 60 days after an asset first becomes delinquent unless all delinquencies on such asset have been cured.

Additionally, Consumers Union recommends that servicers should be required to resolve all decisions regarding what to offer a borrower seeking a loan modification and to make that offer no later than 30 days after the borrower has submitted all documentation required to make a determination on a loan modification request. Including a time certain requirement would incentivize servicers to process loan modification requests in a timely manner. These requirements would address a serious problem reported to Consumers Union that borrowers' requests for loan modifications are languishing because of servicer delays--then borrowers have to endure further delay when servicers request the same information again, because the information previously provided is no longer considered current by the servicer. For too many borrowers, this has been a never ending cycle with no relief in sight.

IV. Compensation Incentives

The ability to gain immediate and substantial compensation upon the origination of mortgage obligations, regardless of underwriting soundness and/or performance of the obligation fueled rampant irresponsible lending leading to an avalanche of non-performing mortgages. To address this problem, Consumers Union supports a requirement that the bulk of fees payable to the lender, sponsor, credit rating agencies and underwriters should be payable only upon a showing of satisfactory performance of an obligation over the five year period after the initial issuance of the obligations. At closing, no more than five percent of the total compensation due to any party should be paid. As long as the asset is performing, the remaining 95 percent shall be paid at the completion of annual intervals following the closing as follows: Year one—10 percent; Year two—10 percent; Year three—15 percent; Year four—25 percent; Year five—30 percent.

By requiring all who stand to receive financial gain from the origination of mortgages to receive compensation based upon the performance of obligations over a longer term, the primary benefits of this potential approach is to improve the quality of mortgage underwriting and lending, improve the performance of these obligations over the long term and minimize risk to potential borrowers, investors and the FDIC. At the same time, this approach provides a structure for earning compensation for providing important services for the origination and servicing of mortgage loans. This structure gradually increases the percentage of the compensation due providing those with the best performing loans over the longest duration with the highest compensation payments over time.

At the same time, requirements should be imposed that better align incentives for proper servicing so that compensation to servicers should be based upon the services provided and actual expenses incurred as well as the servicers performance on loss mitigation actions that maximize the value of the financial assets. The primary benefit of this action will be to prevent unjust enrichment by servicers who do not provide actual services or incur actual expenses related to servicing an asset. This action will also encourage servicers to engage in prompt and sound loss mitigation benefiting both borrowers and investors, and ultimately the national economy by keeping more mortgage loans performing.

V. Origination and Retention Requirements

Consumers Union supports the proposal that for all securitizations, the sponsor should retain at least an economic interest in a material portion of the credit risk related to a financial asset. We propose that this amount should be ten percent and sponsors should retain risk for a minimum of five years going forward.

Additionally, new requirements to incentivize quality origination practices should be applied to Residential Mortgage Loan Securitizations (RMBS). Specifically, a sponsor should be required to clearly and prominently disclose their fees and interest of and compensation paid or due to all parties to a transaction. Next, we support a requirement that mortgages included in the Residential Mortgage Loan Securitizations (RMBS) should be seasoned at least 12 months before they can be securitized.

The alternative posited in the ANPR, requiring a review of specific representations and warranties after 180 days and the repurchase of any mortgages that violate those representations and warranties, is not as likely to produce adequate policing in the mortgage market. Having to retain all of the risk for 12 months prior to securitization gives sponsors a strong incentive to originate only those loans that are prudent, lest they suffer the direct and immediate consequences of originating a bad loan. Requiring this minimum retention period also minimizes the risk that improper loans can contaminate others included in the Residential Mortgage Loan Securitizations (RMBS). Additionally, sponsors whose only interest is in originating and quickly generating fees regardless of the quality of the loans they produce may not be in existence 180 days after they sell their risky loans to another. In these cases, they could not be forced to buy back their bad loans. For these reasons we believe the 12 month retention requirement would better fulfill the goal of aligning the sponsor's interests towards sound underwriting.

Finally, Consumers Union supports a requirement that compels all residential mortgage loans in Residential Mortgage Loan Securitizations (RMBS) to comply with all statutory and regulatory standards and guidance in effect at the time of origination. Additionally, we would add a requirement that subsequent holders of a mortgage remain responsible for misrepresentations and defects in the loan occurring at origination. This will fuel investor demand for only sound, carefully underwritten mortgages and realign the originators' incentives to meet this demand.

V. Conclusion

Consumers Union appreciates the FDIC's careful consideration of the improvements it has proposed to protect consumers and investors in the mortgage marketplace. As the events of the last year and half demonstrate, the safety and soundness of the mortgage market is a critical and integral component of a sound national economy. Individuals, whole communities and local and state governments have likewise been severely impacted by the failure in the U.S. mortgage market. For this reason, we support the FDIC's proposed changes which add more safeguards to the mortgage lending marketplace and urge the FDIC to go further by requiring the additional protections recommended by Consumers Union.

Please do not hesitate to contact me should you have any questions regarding Consumers Union position concerning RIN # 3064-AD55.

Very truly yours,

Norma P. Garcia

Norma P. Garcia
Senior Attorney
Consumers Union