CENTER FOR
RESPONSIBLE
LENDING

February 22, 2010

Mr. Robert E. Feldman
Executive Secretary, Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

RE: 12 CFR Part 360 / 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 Institution in Connection with a Securitization or Participation after March 31, 2010.

Dear Mr. Feldman:

The Center for Responsible Lending (CRL) appreciates the opportunity to comment to the Federal Deposit Insurance Commission regarding treatment of financial assets transferred by an institution in connection with a securitization or participation after March 31, 2010.

CRL is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. We are affiliated with a community development lender, Self Help, which provides carefully underwritten loans to people and small business who have been underserved by other lenders. Over its 27 years of operation, Self Help has provided over $5.6 billion of financing to 55,000 low-wealth families, small businesses, and nonprofit organizations.

CRL commends the FDIC for its concern about ensuring the long-term sustainability of securitized loans, which will protect investors and homeowners alike. Incentives throughout the housing finance system need to be realigned to produce sustainable mortgages and safe investments in any securities backed by those mortgages. The current foreclosure crisis has vividly illustrated how difficult it is to mitigate the damage from unsustainable mortgages and improperly valued assets.

In this letter, we would like to highlight two issues that CRL considers of particular importance. First, as noted above, this crisis also has shown us the importance of correctly aligning the incentives for responsible lending among all participants in the mortgage origination and purchase chain. Although all parts of the mortgage origination chain bear some responsibility for the foreclosure crisis, perhaps nothing exacerbated the crisis as much as Wall Street's demand for predatory loans. As the subprime market grew, investment bankers sought more and more loans with risky characteristics, encouraging the development of higher-risk investments that appeared to offer higher short-term returns.

The best way to prevent a reoccurrence of Wall-Street-fueled bad lending is to hold the secondary market responsible for the quality of securitized mortgages. For this reason, we strongly support detailed disclosure requirements for mortgages in any securitization pool. Such disclosures would make it easier for market participants to examine mortgages carefully prior to securitizing them. In addition to requiring the mortgages to conform to existing supervisory guidance as well as to all statutory and regulatory

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requirements, we suggest the creation of easily reviewable, bright-line criteria such as full documentation of income; underwriting to the maximum rate permitted under the loan, including all taxes and insurance; fees of no more than 2%; mandatory escrow for at least seven years; and no prepayment penalties.[1] Having a "checklist" of these characteristics of safe loans would provide an extra layer of protection to the more subjective analysis of whether a particular loan complies with existing laws, rules, and guidance.

We also support a risk retention requirement as a way to ensure that all participants in the securitization chain have "skin in the game." However, we understand that many financial institutions are concerned that these requirements could prove unduly onerous. For that reason, we suggest that you establish a two-tier structure for risk retention that would establish a reduced risk-retention percentage for loans meeting the bright-line criteria outlined above.

However, experience has demonstrated that reliance on risk retention provisions alone is not enough to ensure compliance. In the past, risk was also retained through recourse arrangements and buy-back requirements, yet the system still failed. Instead, it is crucial that all subsequent holders of a mortgage remain responsible for violations of lending law that occur at the time of origination. Direct and meaningful accountability to those injured by inappropriate behavior is the only way to make victims whole and discourage risky behavior.

Finally, we are enthusiastic about the proposals for improving loss mitigation by loan servicers. It is of the utmost importance that servicing agreement contracts provide more specific guidance to servicers regarding loss mitigation. Servicers need clear authority and clear instruction to modify loans prior to instituting foreclosure proceedings, including the requirement that the servicer act in the best interest of all investors as a whole. It is also crucial to align servicer financial incentives with the best interest of both the investors and the homeowners, as the misalignment of these incentives is a primary stumbling block to current efforts to modify troubled mortgages. For a longer discussion about how to mandate better loss mitigation practices by servicers, we refer you to the more detailed Comment being submitted by the National Consumer Law Center (on behalf of its low-income clients) and the National Association of Consumer Advocates.

In closing, we commend the FDIC for its unwavering dedication to improving the mortgage origination, securitization, and loss mitigation processes and its innovative approaches to difficult issues. Thank you again for the opportunity to comment on the FDIC's ANPR. If you have any questions or would like more information, please do not hesitate to contact me.

Sincerely yours,

Julia R. Gordon

Julia R. Gordon
Senior Policy Counsel

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[1] Prepayment penalties were a pervasive and insidiously harmful feature of the now-collapsed subprime market. Originators sold them because lenders paid higher fees for them, and lenders paid higher fees for them because Wall Street assumed they would protect the income stream to investors. We now know that the harm caused by trapping borrowers in bad loans and stripping equity caused far more harm to investors in the long run. Even if the FDIC does nothing else regarding mortgage origination standards, it should exclude from the future safe harbor any securitizations containing a prepayment penalty tranche.