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FDIC

DEC 27

OFFICE OF THE CHAIRMAN

MORTGAGE BANKERS ASSOCIATION®
Investing in communities

December 22, 2010

The Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Mary L. Schapiro
Chairman
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

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

John G. Walsh
Comptroller of the Currency (Acting)
250 E Street, SW
Washington, DC 20219-0001

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Ladies and Gentlemen:

The Mortgage Bankers Association[1] (MBA) appreciates your efforts to implement Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA)[2] by issuing regulations to require securitizers to retain a portion of the credit risk of assets they securitize.

Considering the impact of these regulations on the commercial real estate finance sector and the short time allotted by the DFA for developing the rule, MBA respectfully submits the following

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] Public Law 111-203, (July 21, 2010).

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perspectives for the federal agencies to consider when addressing retained risk for commercial real estate loans that are securitized. We also submit the attached "CMBS Risk Retention" policy position, adopted by the MBA's Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG) for your consideration. In crafting this policy position, COMBOG intends to phase in its policy by first addressing broad policy issues upfront followed by more detailed policy throughout the proposed regulatory comment period and the two-year implementation period that specifically address the DFA's regulatory mandates. MBA promotes a robust and constructive dialogue to create a new CMBS program construct that works for and is designed by the market. However, we recognize the regulators' Congressional mandate to craft proposed regulations and therefore, are providing comments in advance of the proposed rule's issuance that outline our broad policy on risk retention applicable to CMBS and underscore our guiding principles in addressing the DFA's mandates.

Background

The DFA requires the Federal Deposit Insurance Corporation (FDIC), The Board of Governors of the Federal Reserve System (Federal Reserve), the Comptroller of the Currency (OCC) and the Securities and Exchange Commission (SEC) (collectively, the federal agencies) to jointly prescribe rules for retained risk for CMBS and other asset-backed security (ABS) categories. The DFA calls for retaining "no less" than five percent of the credit risk of the assets underlying an ABS. However, in the case of CMBS, when considering retained risk of less than five percent, the federal agencies may consider the following:

1. Retention of a specified amount or percentage of total credit risk of the asset;

2. Retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first-loss position, holds adequate financial resources to back losses, provides due diligence of all individual assets in the pool before the issuance of the ABS, and meets the same standards for risk retention that the federal agencies require of the securitizer;

3. A determination of the federal agencies that the underwriting standards and controls for the asset are adequate, and;

4. Provision of adequate representations and warranties and related enforcement mechanisms.

MBA's Perspective

MBA is committed to facilitating the establishment of a fully-functioning, transparent, liquid and responsible securitization market for commercial real estate mortgages. The CMBS market involves a complex set of interactions among numerous stakeholders. Corrective remedies for this market should: advance an alignment of interests among investors, issuers, originators, servicers and borrowers; and support credible, safe and sound lending practices that reflect the needs and sophistication of both the investors in CMBS and the owners of commercial real estate properties.

When establishing the proposed regulations regarding risk retention applicable to CMBS, MBA supports a flexible approach to risk retention and we request that the proposed regulations you will issue align with the following principles:

1. MBA will continue to work over the proposed regulatory comment period and the two-year implementation period with the regulators to address the DFA's regulatory mandates and with industry participants to identify and implement positive developments in CMBS program design, structure and execution, as the market returns to certainty.

2. MBA supports inclusion in the proposed regulations of a five percent vertical slice as a mechanism for retaining necessary economic risk and strongly urges that the regulations do not prescribe structures which would cause a prudent originator or issuer reporting under Generally Accepted Accounting Principles (GAAP) to consolidate under FAS 167. The DFA requirements for the regulators to allocate retained risk between the issuer and the originator should include the following methods:

   A. Regulators should honor third-party, arms-length agreements to foster competition and to recognize different business models in the marketplace and promote transparent disclosure of the terms of such allocation to investors.

   B. Regulators should consider Fannie Mae and Freddie Mac as multifamily issuers and honor existing arms-length allocation of risk retention with their Delegated, Underwriting and Servicing (DUS) lenders and their Program Plus® Seller/Servicers, respectively, as satisfactory in meeting the DFA's requirements of allocated risk between originators and securitizers.

3. MBA supports the following mitigants to reduce the amount of retained risk, that the DFA allows the regulatory agencies to consider:

   A. Regulators should permit reduced retained risk for loans that clearly meet the parameters of a low-risk loan.

   B. Loans with underwriting standards that allow them to clearly meet the parameters for a low risk loan should also be subject to industry–developed representations and warranties.

   C. Regulators should permit reduced retained risk for CMBS with first-loss positions of five percent or greater that are purchased and held by a third-party for a time period in which most loan defaults are expected to occur.

MBA strongly encourages the federal agencies to take a balanced and flexible approach to retained risk for CMBS. We look forward to working with you on these important issues over the proposed rule's comment period and throughout the subsequent implementation of the rule.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer

Enclosure

MORTGAGE BANKERS ASSOCIATION®
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COMMERCIAL REAL ESTATE/MULTIFAMILY FINANCE

BOARD OF GOVERNORS

Mortgage Bankers Association

December 16, 2010

RESOLUTION

SUBJECT: CMBS Risk Retention

BE IT RESOLVED THAT: The Commercial Real Estate Estate/Multifamily Finance Board of Governors of the Mortgage Bankers Association ("MBA") is committed to facilitating the establishment of a fully-functioning, transparent, liquid and responsible securitization market for commercial real estate mortgages. The commercial mortgage-backed securities (CMBS) market involves a complex set of interactions among numerous stakeholders. Corrective remedies for this market should: advance an alignment of interests among investors, issuers, originators, servicers and borrowers; support credible, safe and sound lending practices that reflect the needs and sophistication of both the investors in CMBS and the owners of commercial real estate properties; and reflect the Guiding Principles (attached) adopted by the COMBOG Risk Retention Task Force.

Consequently, static and narrowly defined government-prescribed regulations are ill-suited to address CMBS market challenges in a comprehensive manner. MBA promotes a robust and constructive dialogue to create a new CMBS program construct that works for and is designed by the market.

The Wall Street Reform and Consumer Protection Act of 2010 ("The Dodd-Frank Act") requires the banking regulatory agencies[3] and the Securities and Exchange Commission (SEC) to issue new regulations governing CMBS by April 2011. When evaluating the proposed regulations regarding risk retention applicable to CMBS, MBA supports a flexible approach to risk retention and will evaluate the proposed regulations based upon their conformity with the following principles:

1. MBA will continue to work over the proposed regulatory comment period and the 2-year implementation period with the regulators to address the Dodd-Frank Act's regulatory mandates and with industry participants to identify and implement positive developments in CMBS program design, structure and execution, as the market returns to certainty.

2. MBA supports inclusion in the proposed regulations of a 5.0 percent vertical slice as a mechanism for retaining necessary economic risk and strongly urges that the regulations do not prescribe structures which would cause a prudent originator or issuer reporting under Generally Accepted Accounting Principles (GAAP) to consolidate under FAS 167.

   The Dodd-Frank requirements for the regulators to allocate retained risk between the issuer and the originator should include the following methods:

   A. Regulators should honor third-party, arms-length agreements to foster competition and to recognize different business models in the marketplace and promote transparent disclosure of the terms of such allocation to investors;

   B. Regulators should consider Fannie Mae and Freddie Mac as multifamily issuers and honor existing arms-length allocation of risk retention with their Delegated, Underwriting and Servicing (DUS) lenders and their Program Plus® Seller/Servicers, respectively, as satisfactory in meeting the Dodd-Frank Act's requirements of allocated risk between originators and securitizers.

3. MBA supports the following mitigants to reduce the amount of retained risk, that the Dodd-Frank Act allows the regulatory agencies to consider:

   A. Regulators should permit reduced retained risk for loans that clearly meet the parameters of a low risk loan.

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[3] The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency.

B. Loans with underwriting standards that allow them to clearly meet the parameters for a low risk loan should also be subject to industry–developed representations and warranties.

C. Regulators should permit reduced retained risk for CMBS whose first-loss position of 5.0 percent or greater was purchased and must be held by a third-party for a time period in which most loan defaults are expected to occur.

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RECOMMENDATION OF: COMBOG

Attachment: Risk Retention Task Force Guiding Principles

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Guiding Principles

To facilitate the re-establishment of a fully-functioning, liquid, and responsible securitization market for commercial real estate mortgages, all new regulations should strive to:

- Support the efficient flow of mortgage capital from investors to borrowers;
- Help restore investor confidence and the ability of investors to accurately assess the risks in the collateral and in the securitization structure;
- Ensure risks are properly assessed, mitigated and/or priced by those who take them on or control them;
- Support credible, safe and sound lending practices that reflect the needs and sophistication of both the investors in commercial real estate securities and the owners of commercial real estate properties;
- Advance alignment of interests among investors, issuers, servicers, originators and borrowers;
- Increase transparency across all aspects of the market, assuring adequate information for investors while protecting individual privacy and proprietary business models;
- Promote accurate accounting that is understandable and reflects the true risks and benefits of securitizations; and
- Provide flexibility to allow for a number of different forms of risk retention and risk allocation.

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Facsimile Cover Sheet

Date December 22, 2010 Total Pages with Cover Nine
To The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation
Telephone Fax (202) 898-3500
From John A. Courson, President and CEO, Mortgage Bankers Association
Telephone (202) 557-2703 Fax (202) 621-1544

Please deliver immediately to the office of:

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

Thank you,

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

If you experience any transmission issues, please contact:
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Mortgage Bankers Association
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MBA offices will be closed during the holidays from Friday, December 24, through Friday, December 31, 2010. The offices reopen on Monday, January 3, 2011.