August 1, 2011

Addresses:

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 2-3
Washington, DC 20219

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Jennifer J. Johnson, Secretary

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

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn.: Elizabeth M. Murphy, Secretary

Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attn.: Alfred M. Pollard, General Counsel

Department of Housing and Urban Development
Regulations Division
Office of General Counsel
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

From

Max Cook, CEO and President
Missouri Bankers Association
P.O. Box 57
Jefferson City, Mo 65101

Re: Proposal to Establish Credit Risk Retention Requirements
76 *Federal Register* 24090, April 29, 2011

Ladies and Gentlemen:

The Missouri Bankers Association (MBA)[1] hereby responds to the request for comment by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (the "Banking Agencies"); the Securities and Exchange Commission (the "SEC" or the "Commission"); and the Federal Housing Finance Agency and the Department of Housing and Urban Development (collectively, the "Agencies")[2] on the Agencies' joint proposal to implement the requirements of section 941 of the Dodd-Frank

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[1] The Missouri Bankers Association represents banks and savings institutions in Missouri from large to small is the umbrella bank trade association representing members with about 30,000 employees.

[2] References to "the Agencies" in this letter, means the appropriate Agencies having rulewriting authority with respect to any particular aspect of the proposed rules.

Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act or DFA).[3] Section 941 generally requires securitizers of asset-backed securities (ABS) to retain an economic interest in a portion of the credit risk of those transactions. It further directs the Agencies to craft risk retention requirements and exceptions that incent securitization participants to originate soundly underwritten assets and align the interests of participants with investors, consistent with improving access to credit on reasonable terms. The MBA has adopted the basic thrust of the American Bankers Association comments on the credit risk retention issue.

MBA represents large and small banks that participate in the securitization market both as originators and securitization issuers. More important, while a few Missouri banks still hold all their residential mortgage loans, most look to some means to sell those loans and in turn, many will be securitized, if not by the bank itself, then by an upstream correspondent.

The MBA acknowledges that some sectors of the securitization market performed very poorly in the recent past and that the financial crisis exposed serious flaws in the securitization process. From a credit risk perspective, the major problems that arose in the securitization market during this time were concentrated in securities backed by various types of residential mortgage loans (RMBS), in securitizations that invested in RMBS, and to a lesser degree in commercial mortgage-backed securities (CMBS). However, as recognized by the Federal Reserve Board in its *Report to Congress on Risk Retention* (FRB Report), while nonconforming prime RMBS, nonprime RMBS, and CMBS experienced significant credit rating downgrades between 2007 and 2010 and the likelihood of default increased significantly, "other ABS categories have very few or no securities rated likely to default."[4] We believe that such analysis should be given significant weight as the Agencies continue their deliberations so that the rules implementing Section 941 are appropriately targeted to the practices Congress intended to be addressed.

The MBA further asks the Agencies to take note of the numerous types of transaction structures the market has developed to reflect distinct features of the various classes of assets that are securitized, relevant legal regimes and investor preferences. We believe that regulations that are intended to address a particular type of ABS transaction or structure may well not transfer readily to other types of ABS transactions.

Indeed, the heterogeneity of the securitization market was recognized by the Federal Reserve Board in its Congressionally mandated study of the market:

> "Thus, this study concludes that simple credit risk retention rules, applied uniformly across assets of all types, are unlikely to achieve the stated objective of the [Dodd-Frank] Act—namely, to improve the asset-backed securitization process and protect investors from losses associated with poorly underwritten loans … Given the degree of heterogeneity in all aspects of securitization, a single approach to credit risk retention could curtail credit availability in certain sectors of the securitization market. A single universal approach would also not adequately take into consideration different forms

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[3] Pub. L.111-203 (2010). Section 941(b) adds new Section 15G to the Securities Exchange Act of 1934, as amended (Exchange Act).

[4] *See*, Board of Governors of the Federal Reserve System, *Report to Congress on Risk Retention* at 49 (Oct. 2010), available at http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf.

> of credit risk retention, which may differ by asset category. Further, such an approach is unlikely to be effective in achieving the stated aims of the statute across a broad spectrum of asset categories where securitization practices differ markedly. … In light of the heterogeneity of asset classes and securitization structures, practices and performance, the Board recommends that rulemakers consider customizing credit risk retention requirements that are tailored to each major class of securitized assets.[5]

CONCLUSIONS

MBA strongly believe that the proposal as currently drafted is so flawed that it must be withdrawn and re-issued. We believe that fundamental concepts in the proposal, such as how to measure the retained risk, are so unclear that it is impossible for the industry to provide well-reasoned responses to those critical aspects of the proposal. In addition to the lack of clarity, we believe that without significant changes the proposal will have a destructive impact on the securitization market and the availability of credit to consumers and businesses, and we have provided detailed comments to address our concerns. The proposed Premium Capture Cash Reserve Account (PCCRA) which would make most securitizations economically untenable is but one example of the fatal flaws in the proposal. Indeed, the PCCRA would increase the base risk retention requirement of "five percent" to "five percent plus all of the securitizer's and originator's profit as well as a significant percent of their cost basis in the underlying assets", thus effectively rendering most securitizations uneconomic.

Moreover, the exceptions to the risk retention requirements fail to comport with Congressional intent with respect to the narrowness with which they are crafted. Section 941 granted the Agencies significant discretion when promulgating their regulations to establish the scope of the QRM exemption, and to employ a range of amounts of retained economic interests from zero percent to five percent that would be reflective of the underwriting standards of particular assets, and finally, to exempt entire classes of assets where warranted. Yet, the proposal reflects an "all or nothing" approach to the retention requirements with zero percent retention for very narrowly crafted asset classes, and five percent retention for all other assets, with nothing in between. These narrow qualified asset exemptions are not workable, with the result that five percent retention will become the standard, leading ultimately to a constriction of credit for otherwise creditworthy borrowers. While Section 941 applies the risk retention rules to all ABS, not just to MBS, MBA believes the performance of non-MBS sectors throughout the financial crisis should be given significant weight in the Agencies' deliberations and use of their exemptive authority.

In addition, MBA believes the risk retention rules must be viewed in an overall perspective that takes into account additional Dodd-Frank and other rulemakings that, taken collectively may magnify the impact of the risk retention rules. This is particularly the case in the context of securitizations collateralized by residential mortgages, a market currently experiencing wholesale transformations in applicable regulations. Beyond regulations directly impacting classes of collateral, the risk retention requirements will necessarily interact with current and future Basel capital requirements and accounting rules. As a result, a risk retention requirement that, on its

[5] FRB Study at 3, 83-84.

face, appears to be workable, may nonetheless make securitization transactions economically unfeasible.

Given the critical importance of a robust securitization market to provide the business and consumer credit necessary for a healthy economy, the MBA urges the Agencies to conduct appropriate economic analyses of the proposal with respect to the impact on private securitization markets and the expected long-term increased costs of credit to consumers and small businesses. Those analyses should inform the Agencies' deliberations as the rulemaking process moves forward.

MBA offers the following general categories of concerns:

- The proposal lacks sufficient clarity concerning the measure of the retained risk that the industry is unable to provide meaningful comments on the feasibility and economic impact of the proposal. In addition, the proposal needs many wholesale revisions, and we have provided some comments on those aspects which we believe are flawed. For both of these reasons, the Associations believe that a re-proposal is both necessary and critical to ensure that the final outcome is both well understood by all parties and workable for the numerous types of assets that are securitized. Given the cumbersome and, no doubt lengthy, process for interpretations of a final rule, it is absolutely essential that the industry be given the opportunity to comment on a clearly understood proposal so that a final rule does not raise an undue number of interpretive questions.
- The Agencies should conduct appropriate economic analysis to evaluate the impact of this or any other version of the proposal on (1) the securitization market and (2) the availability of credit to both businesses and consumers.
- The QRM standard should be redefined.
- The PCCRA should be eliminated if securitization is to be restored as a viable funding source.
- The various permissible forms of risk retention should be restructured and expanded to make them workable.
- The risk retention requirement should terminate after a reasonable time.
- The other qualified asset exemptions provided in the proposal must be re-written to ensure that they are workable.

Collectively, MBA believes the necessary changes warrant a re-proposal after additional consultation with industry participants. Given the time-consuming and burdensome interagency process specified in the proposal for seeking interpretations, exceptions, waivers, *etc*., it is imperative that the provide final rules that are clear and straightforward to ensure that the industry will be able to understand what is required of it and be able to comply.

As part of this process, it is critical that the Agencies balance the development of risk retention requirements that implement Congressional intent to better align incentives with the need to ensure that the private securitization market is restored as a viable and robust source of funding. To do otherwise will most certainly result in an unnecessary restriction in credit for consumers and businesses, to the overall detriment of our economy. If these goals are balanced correctly, the risk retention rules will not hinder the return of the private securitization market, which will help loan originators to provide credit –and particularly mortgage credit – to borrowers at a reasonable cost.

MBA notes further that revitalization of the private RMBS market is a crucial element in the current national policy debate over the future of Fannie Mae and Freddie Mac and the objective of significantly reducing reliance on them. There is a growing consensus that efforts must be undertaken to reinvigorate the private RMBS market and begin a measured reduction of the role of the GSEs in the marketplace. The rule as proposed would make this more difficult by essentially ceding large segments of the RMBS market which do not meet the Qualified Residential Mortgage exception to the GSEs for the foreseeable future.

On behalf of our members, thank you for giving the Missouri Bankers Association an opportunity to register our concerns and our support of the American Bankers Association comments.