SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

BARNEY FRANK, MA, RANKING MEMBER

August 2, 2011

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

The Honorable Martin Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

The Honorable Ben S. Bernanke
Chairman
Federal Reserve Board
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

The Honorable Mary Schapiro
Chairman
Securities Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, N.W.
4th Floor
Washington, DC 20552

Mr. John Walsh
Acting Comptroller of the Currency
Office of Comptroller of the Currency
250 E Street, S.W.
Washington, DC 20219

Dear Sir or Madam:

Many Members of Congress have already expressed concerns regarding the risk retention proposal issued by your agencies pursuant to Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203). While these concerns have centered on the narrow definition of what constitutes a "qualified residential mortgage" and the preferential treatment of mortgages securitized by Fannie Mae and Freddie Mac, other provisions that have received less attention are equally problematic, and warrant further study by your agencies before a final rule is issued.

Specifically, the proposal contains a requirement – never discussed during the deliberations on what became the Dodd-Frank Act – that securitizers set aside the premium from sales of securities in so-called "premium capture cash reserve accounts" ("PCCRAs"). The PCCRA must be maintained for the life of the security, with the funds in the account occupying the first loss position on top of the 5% risk retention requirement. The end result would be that securitizers could not collect a profit until up to ten years later, when the security matures.

Securitizers across all asset classes would be forced to bear all of the downside risk associated with their interest rate exposure while waiting years to recognize any potential profit for taking that risk. It is not surprising that the securitization community has already commented that this ill-conceived provision will greatly reduce or perhaps even eliminate the securitization market, which the Financial Stability Oversight Council recently acknowledged "has improved the availability and affordability of credit to a diverse group of businesses, consumers, and homeowners in the United States."

Cutting off or greatly reducing this vital source of capital through the operation of a provision that Congress never considered (or even contemplated) is bad policy and an inappropriate exercise of regulatory authority. When the economy desperately needs funds to flow to businesses of all types in order to create jobs and to finance student loans, auto purchases, home purchase, commercial property development, and daily business operations, the government should not experiment with untested and theoretical concepts that could unnecessarily constrict capital.

Accordingly, we urge that your agencies perform a rigorous cost-benefit analysis to determine the effect of the PCCRA requirement on economic growth and the vitality of the U.S. securitization market before finalizing the risk retention rule.

Thank you for your attention to this important matter.

Sincerely,

Spencer Bachus

SPENCER BACHUS
Chairman

Scott Garrett

SCOTT GARRETT
Chairman
Subcommittee on Capital Markets
and Government Sponsored
Enterprises