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Congress of the United States
Washington, DC 20515

December 18, 2013

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

The Honorable Martin J. Gruenberg
Director
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Mary Jo White
Chairman
The Securities and Exchange Commission
100 F Street, NE, Room 10700
Washington, DC 20549

The Honorable Thomas J. Curry
Comptroller of the Currency
Administrator of National Banks
250 E Street, SE
Washington, DC 20219

Dear Sirs and Madams:

We are writing to express our concerns regarding your joint rulemaking re-proposal implementing the risk retention requirements of Section 941 of the Dodd Frank Act, issued on August 28, 2013. The re-proposal is an earnest effort to improve upon the initial proposed joint rulemaking issued in March 2011. We believe that risk retention is an important policy and a necessary protection that will ensure that the interests of securitizers and investors are aligned. However, the provisions regarding open market collateralized loan obligations (CLOs), as opposed to balance sheet CLOs that are subject to risk retention, continue to concern us in terms of their possible effect on credit availability.

Open market CLOs are a vital source of corporate finance in the United States. They provide almost $300 billion worth of loans to American companies — almost one-quarter of all outstanding funded corporate loans. Understanding the significant role CLOs play, we want to ensure that the risk retention requirements are properly tailored to the unique structure of open market CLOs. Because open market CLOs are not "originate to distribute" securitizations, simply applying the standard risk retention rules designed for such securitizations to open market CLOs does not necessarily make sense. As you acknowledge in your re-proposal, "the standard form of risk retention in the original proposal could, if applied to open market CLO managers, result in fewer open market CLO issuances and less competition in the sector."

We believe it is possible to craft a risk retention rule for open market CLOs that accomplishes the important goals of Section 941 — aligning the interests of securitizers and investors through risk retention — but does not needlessly restrict this important source of capital for American business.

The August re-proposal contains two alternative approaches for open market CLO risk retention, each of which could impede the issuance of new CLOs. The first option, which was also included in the original proposal, treats open market CLO managers in the same manner as those who originate and sell loans to securitization vehicles by requiring the CLO managers to retain

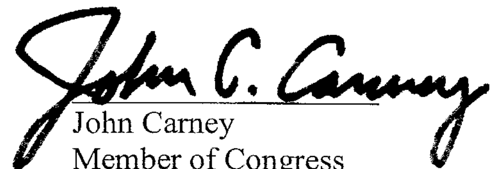
5% of the CLO's fair value. As you acknowledged, this could prove to be problematic because CLO managers purchase loans in the open market rather than originating the asset. Further, almost all CLO managers are registered investment advisers, and generally have very limited balance sheets. Because of this, very few could retain a 5% share of a CLO.

The re-proposal introduces a new loan arranger risk retention option that may also be problematic. Under this alternative, CLO managers would be able to form CLOs that purchase only "CLO-eligible tranches" without the need to retain risk. To create a CLO-eligible tranche, a bank that arranges a loan syndication would be required to hold a 5% share of the tranche targeted to open market CLOs for the life of the loan, and would be prohibited from selling or hedging any exposure. We understand that for a number of reasons, loan arrangers are very unlikely to create CLO-eligible tranches at all. First, banks typically extend revolving credit loans to corporations rather than hold tranches that are specifically designed for institutional investors. Even if a bank was willing to hold such loans, the rule's prohibition on actively managing this exposure would run counter to both sound portfolio management as well as long-established principles of prudential regulation.

Your collective effort in developing a Qualified Residential Mortgage definition that struck a balance between responsible underwriting and the promotion of homeownership is a model worth duplicating with respect to open market CLOs. We urge you to consider alternative approaches to risk retention, such as retention by third party equity sponsors, strict underwriting criteria, or a combination of these or other similarly thoughtful and workable proposals. We encourage an approach that achieves the goals of Section 941 while enabling the continuation of the vibrant CLO market that is so important to economic growth.

Sincerely,

Gary Peters
Member of Congress



John Carney
Member of Congress

Jim Himes
Member of Congress

Bill Foster
Member of Congress

John Delaney
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