

# United States Senate

WASHINGTON, D.C. 20510

June 19, 2012

The Honorable Shaun Donovan  
Secretary  
Department of HUD  
451 7<sup>th</sup> Street, SW  
Washington, DC 20551

The Honorable Ben Bernanke  
Chairman  
The Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave, NW  
Washington, DC 20429

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

The Honorable Marty Gruenberg  
Acting Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

The Honorable Tom Curry  
Comptroller  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219

Mr. Edward DeMarco  
Acting Director  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20024

Dear Secretary Donovan, Chairmen Bernanke, Schapiro, Acting Chairman Gruenberg, Comptroller Curry, and Acting Director DeMarco:

We are writing to you with 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). Rather than promoting the flow of credit in the commercial real estate and residential mortgage sector, the proposed rule goes in the wrong direction and takes away the flexibility Congress intended by applying a rigid approach and adding extraneous features, such as the Premium Capture Cash Reserve Account and an excessively rigid down-payment requirement in the Qualified Residential Mortgage exclusion.

On March 31, 2011, the joint risk retention rule proposal was released for comment. Since then, the six federal financial services regulators have received 13,000 letters in response to the proposal.

Congress specifically rejected a one-size fits all risk retention rule for well-underwritten qualified residential mortgages ("QRM") and commercial-mortgage backed securities ("CMBS"). Section 941 recognized that QRM and CMBS, were unique, treated them uniquely under the law, and required that they be distinguished under the proposed rules. The merits of this approach was reinforced by the Federal Reserve's October 2010 study, which recommended "crafting credit risk retention requirements that are tailored to each major class of securitized assets" and "to ensure that the regulations promote the purposes of the Act without unnecessarily reducing the supply of credit."

In the area of CMBS and residential mortgage-backed securities ("RMBS") we are concerned that regulators included a requirement for the establishment of Premium Capture Cash Reserve Accounts ("PCCRAs") in the proposed rule that would negatively impact capital formation. The PCCRA, which was not envisioned by Congress, would require securitizers to set aside the premium from the sale of securities in separate account for the life of the security. This account would occupy the first loss position and would be in addition to the 5% risk retention requirement. The end result would be that securitizers could not recognize compensation until the security matures many years later and would be forced to bear all downside risk associated with interest rate exposure while waiting years to recognize any potential profit from that risk. The alternatives to creating the PCCRA are not appealing to those investors the rules are designed to protect and would require a significant restructuring of CMBS and RMBS deals.

This approach fundamentally alters the existing securitization model, conflicting with the Financial Stability Oversight Council's own report on the objectives for risk retention which noted in objective one to, "align incentives without changing the basic structure and objectives of securitization transactions." We believe that the PCCRA goes well beyond Congressional intent and we urge you to reconsider its inclusion in the risk retention proposal.

We have also expressed concerns about the rigid QRM definition in the past. The QRM exclusion to risk retention is key to attracting private capital to the mortgage securitization market and restoring confidence to consumers, lenders and investors. The down-payment restriction of the proposed regulation goes beyond the intent and language of the statute and would increase consumer costs and reduce access to affordable credit.

Despite Congressional direction on these issues, the proposed rule uses a homogenized approach that takes away the asset-specific flexibility provided by Congress. We are concerned this will cut off or greatly reduce a vital source of capital across all asset classes. Congress crafted a statute that was designed to provide the appropriate balance between strong standards that align the interests of lenders, issuers and investors with the ability of the securitization process to work. The proposed rule does not accomplish this goal. We urge you to modify the proposed risk retention rule to follow Congressional intent by eliminating the PCCRA and the unnecessarily tight down payment restrictions on QRM.

Sincerely,

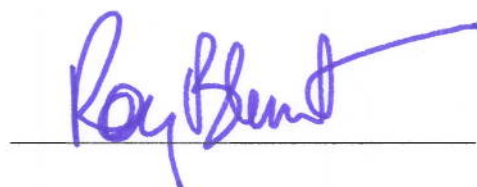
 

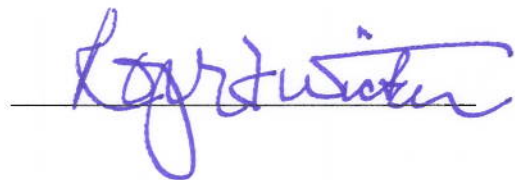


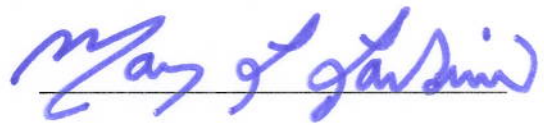


Jerry Moran











Herb Kohl



