March 22, 2010

The Honorable Christopher Dodd
Chairman
Committee on Banking, Housing
and Urban Affairs
U.S. Senate
Washington, DC, 20510

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing
and Urban Affairs
U.S. Senate
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby:

As the Banking Committee considers the recently released financial regulatory reform Committee Print, the Mortgage Bankers Association[1] wishes to express its strong opposition to the bill's provisions that would require additional "risk retention" for residential and commercial mortgage financing and securitization.

While MBA understands the committee's purposes in developing provisions to assure that lenders and securitizers have a stake in the successful performance of loans and pools – the legislation's current requirements for additional risk retention would have particularly adverse consequences for both the residential and commercial mortgage markets. Furthermore, the residential and commercial securitization markets are already grappling to implement complex new accounting rules (FAS 166 and 167) related to risk retention. Introducing new rules that would specifically prescribe the duration, form, allocation, and amount of credit risk would hamstring the ability of investors and issuers to quantify and price risk, curtailing capital flow.

Below are our specific concerns with the current risk retention proposals for both of these areas.

[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 2,400 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.

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Risk Retention for Residential Mortgage Lending and Securitization

The risk retention section of the new Committee Print instructs the regulators to set risk retention requirements lower than five percent for asset classes that meet the regulators' defined low-risk underwriting standards and other criteria. MBA believes that the legislation should be modified to further enhance the risk differentiation framework. Specifically, the legislation should include a category for carefully defined, documented and underwritten residential real estate loans that would be definitively exempt from the statutory risk retention requirements. The exempted loan category also provides an additional incentive for lenders to adopt the highest level of prudent lending practices. The clarity and certainty associated with such a statutory mandate is necessary to avoid ambiguity, which could trigger further contraction in real estate lending practices while lenders wait on the sidelines until regulations are issued.

It is important to note that such a specific statutory exemption does not give lenders a "free pass" or cause them to have no "skin in the game." Lenders originating loans that meet the criteria for the risk retention exemption would still be subject to a host of existing risk retention requirements such as risk-based capital, contractual obligations and other regulatory and statutory consumer protection and safety and soundness standards.

An exemption for qualified mortgages also benefits consumers. Safe, sound and carefully underwritten loans would be more affordable than higher risk products because they would not be subject to the risk retention requirements' additional costs.

Enacting broad risk retention that would require lenders to keep a portion of the original loan on their books, would eliminate a sizeable percentage of the mortgage lending capacity in this country. Requiring independent non-depository mortgage lenders to retain a portion of every mortgage they sell would render their business model unsustainable. Elimination of this critical segment of the market – often smaller lenders that serve underrepresented areas and borrowers – would limit capacity and choice for consumers, driving up borrowing costs or limiting access to mortgages altogether – the last thing we need in a real estate market that is just beginning to see signs of recovery.

Risk Retention for Commercial Real Estate

Commercial and multifamily mortgages are business-to-business transactions among sophisticated borrowers and lenders that weigh a variety of risks and benefits in making their decisions. Embedded in commercial mortgage-backed securities (CMBS) are structural elements that already provide risk retention, and we believe adding additional risk retention requirements to commercial and multifamily mortgages could have unintended consequences such as increasing the costs of commercial real estate lending and slowing efforts towards economic recovery. Additionally, CMBS issuers

provide representations and warrantees that require the issuer to purchase a loan from a CMBS pool if certain conditions are not met. In the case of CMBS, federally prescribed risk retention does not consider dynamic market forces, nor existing risk retention measures, necessary to ensure the alignment of participant interests. Consequently, these requirements should be removed from the legislation.

A federally prescribed risk retention regime for CMBS would constrain credit markets and the economic recovery in the commercial real estate sector. While the legislation recognizes that commercial mortgages require separate risk retention rules, we are concerned that the bill's provisions would lead to unintended consequences. Specifically, the development of underwriting standards by the regulatory agencies for loans that will receive consideration for reduced risk retention will effectively prescribe underwriting standards for many lenders. These standards may not allow the lender to take into consideration the individual circumstances of both the borrower and property. This may limit the ability of the lender to provide funding or steer the lender to a funding source that does not have required risk retention.

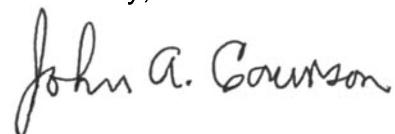
The legislation also creates great accounting uncertainly for the CMBS market due to the recent implementation of the FAS 166 and 167 accounting rules. These new rules bring into question how new prescribed risk retention would impact the balance sheet treatment of CMBS by issuers. We are also concerned that there potentially may be different implementation rules for market participants, because the prohibition of hedging risk retention may be at odds with safety and soundness practices of banking institutions.

Conclusion

We urge policymakers to ensure that reforms aimed at the securitized credit markets provide definitive exemptions for safe residential loans and fully exempt commercial real estate transactions. Providing for such clear and specific exemptions will better protect borrowers and support efforts to restore real estate lending – and the capital markets' investments that fuel such lending – which is critical to our nation's economic recovery.

We appreciate your consideration of our concerns and look forward to continuing to work with you on these important matters.

Sincerely,



John A. Courson
President and Chief Executive Officer