July 27, 2011

VIA EMAIL

Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2011-0002
regs.comments@occ.treas.gov

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.,
Washington, DC 20429
RIN 3064-AD74
comments@FDIC.gov

Mr. Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW.,
Washington, DC 20552
RIN 2590-AA43
RegComments@fhfa.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW.,
Washington, DC 20551
Docket No. R-1411
regs.comments@federalreserve.gov

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File Number S7-14-11
rule-comments@sec.gov

Department of Housing and Urban Development
Regulations Division, Office of General Counsel
451 7th Street, SW., Room 10276
Washington, DC 20410-0500
Docket No. FR-5504-P-01
www.regulations.gov

RE: Proposed Rule to Establish Credit Risk Retention Requirements: OCC Docket No. OCC-2011-0002; FRB Docket No. R-1411; FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-AA43; and HUD Docket No. FR-5504-P-01.

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposal.

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), Federal Housing Finance Agency (FHFA), and Department of Housing and Urban Development (HUD) (collectively, the Agencies) have issued the proposed rule to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934, as added by section 941 of the Dodd-Frank Act (DFA).

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Section 15G generally requires the securitizer of asset-backed securities (ABS) to retain not less than five (5) percent of the credit risk of the assets collateralizing the ABS. Section 15G includes a variety of exemptions from these requirements, including an exemption for ABS that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages" (QRMs), as such term is defined by the Agencies by the rule.

WBA recognizes the difficulty within the very compressed time frame mandated by Congress to try to craft complex regulations for credit risk retention that will have significant, and potentially severe, consequences for the manner in which diverse types of securitization transactions are structured. We appreciate the extraordinary amount of time and resources the Agencies have devoted to developing the proposal. In particular, we appreciate the Agencies' efforts to take into account the diversity of assets that are securitized, the structures historically used in securitizations, and the manner in which sponsors may have retained risk. And, we are grateful that the Agencies have extended the comment period to provide the industry with additional time to digest this complex proposal.

WBA 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 FRB's October 2010 *Report to Congress on Risk Retention*, 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." WBA believes 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.

WBA offers the following specific comments:

The Agencies Should Re-Issue the Proposal

WBA strongly believes 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. In particular, the intent of the Agencies with respect to the measurement of the interests required to be retained through par value or market value is not at all understood by the industry. This valuation is critical to assessing the economic viability of future securitization transactions that will have to comply with these rules, particularly with respect to the premium capture cash reserve account.

Moreover, the exceptions to the risk retention requirements fail to comport with Congressional intent both with respect to the narrowness with which they are crafted as well as the destructive impact on the securitization market and the availability of credit to consumers and businesses. Given the importance of a robust securitization market, not only to provide the business and consumer credit necessary to a healthy economy, but also to further public policy with respect to Fannie Mae and Freddie Mac, WBA urges the Agencies to conduct appropriate economic analyses of the proposal with respect to the impact on private securitization markets and the increased costs of credit to consumers and small businesses.

Section 941 granted the Agencies significant discretion when promulgating their regulations to establish the scope of the QRM exception, and to employ a range of amounts of retained economic interests from zero (0) percent to five (5) 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 0 percent retention for very narrowly crafted asset classes, and 5 percent retention for all other assets, with nothing in between. These narrow qualified asset exemptions are not workable, with the result that 5 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, WBA 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, WBA believes the risk retention rules must be viewed in a holistic perspective that takes into account additional DFA 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 face, appears to be workable, may nonetheless make securitization transactions economically unfeasible. Accordingly, WBA urges the Agencies to withdraw the current proposal.

Qualified Residential Mortgage (QRM) Standard Should Be Redefined

Section 941 of DFA requires Agencies to jointly define "qualified residential mortgage" (QRM). Securities backed exclusively by assets meeting the QRM definition will be exempt from risk retention requirements. The Agencies are charged with taking into consideration "underwriting and product features that historical loan performance date indicate result in a lower risk of default."

As a general rule, WBA believes that the QRM standard need be reconsidered and re-proposed to conform more closely with the qualified mortgage (QM) standard proposed by FRB and which will ultimately be implemented by the Consumer Financial Protection Bureau (CFPB). We note that section 941 of DFA requires that the QRM definition cannot be broader than the FRB QM definition and question the rationale and appropriateness of seeking to define QRM before the FRB proposal is finalized.

The Agencies' QRM proposal would impose: (1) high down payment requirements of 20 percent, with even higher levels of 25 percent for refinance loans and 30 percent for cash out transactions; (2) a front-end DTI ratio that does not exceed 28 percent and a back-end DTI ratio that does not exceed 36 percent; (3) restriction that borrowers who are 30 days or more past due on any debt obligations are ineligible for a QRM; and (4) include servicing standards for loans meeting the requirement of a QRM.

WBA believes these additional requirements are overly restrictive and do not comply with the statutory intent behind risk retention. Given the current economic condition of the nation, many consumers will find it extremely difficult to meet these requirements as many have had to draw heavily upon savings and investments monies due to unemployment—thus proposed DTI and downpayment requirements will be near impossible for many to meet. The proposal will also make it extremely difficult for low-income borrowers to qualify for a QRM.

We also believe that this proposal's definition of QRM should much more closely track FRB's QM defined term. At their core, both definitions were intended to improve underwriting, largely through better determinations of consumer's ability to repay and through restrictions on loan features to more traditional, simplified and understandable attributes.

We urge the entire Agencies' approach to the QRM be reconsidered and more closely align with FRB's QM proposal.

Conclusion

While WBA appreciates the extension of the comment deadline, that extension does nothing to mitigate the lack of clarity in the proposal. The Congressionally mandated deadline has now passed, and we believe the far better course of action is to ensure that there is a clear understanding of the Agencies' intent with respect to the rules implementing section 941. Because the rules are of such extraordinary complexity with broad consequences for the entire securitization market, and indeed, borrowers and the economy, WBA believes it imperative that the Agencies take the time necessary to ensure that the rules do not cripple the private securitization market.

WBA believes it is critical that the Agencies balance the development of risk retention requirements that implement Congressional intent 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. Accordingly, WBA urges the Agencies to withdraw the current proposal.

We further urge the Agencies to establish a dialogue with industry participants, such as through roundtables on particular asset classes, and re-propose the regulations in a manner that is straightforward and clear to facilitate compliance by the industry.

Once again, we appreciate the opportunity to comment on the complex proposal.

Sincerely,

Rose M. Oswald Poels
President/CEO