BLACKROCK

October 30, 2013

Via electronic submission

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Docket Number OCC-2013-0010
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Comments/RIN 2501-AD53

Re: Credit Risk Retention; Proposed Rules

Dear Ladies and Gentlemen:

The Department of the Treasury by its Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the U.S. Securities and Exchange Commission (the "Commission"), the Federal Housing Finance Agency (the "FHFA") and the Department of Housing and Urban Development ("HUD" and together with the OCC, the Board, the FDIC, the Commission, and the FHFA, the "Agencies") have requested public comments on the Proposed Rules entitled "Credit Risk Retention," Fed. Reg. 57928 (Sept. 20, 2013) (the "Proposed Rules") which re-proposes the Original Proposed Rules, Fed. Reg. 24090 (Apr. 29, 2011) (the "Original Proposed Rules"). BlackRock Inc. ("BlackRock") commends the Agencies for their extensive work in drafting the Proposed Rules. BlackRock previously provided comments to the Agencies on July 28, 2011 on the Original Proposed Rules (the "Original Comment Letter") attached hereto as Exhibit A and welcomes the opportunity to further express its views on the Proposed Rules.

The Proposed Rules would implement the credit risk retention requirements of Section 15G of the Securities and Exchange Act of 1934 ("Exchange Act") as added by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to generally require an ABS sponsor to retain not less than five percent of any asset that a sponsor, through the issuance of securitized debt obligations, transfers, sells or conveys to a third party. BlackRock endorses the effort by the Agencies in the Proposed Rules to enhance and promote more uniform protection of investor interests. BlackRock continues to believe that the Agencies should adopt a coherent set of regulations that provide for the coordinated and consistent treatment of regulated financial institutions and the asset-backed securities they issue or sponsor.

As of September 30, 2013, BlackRock had assets under management totaling $4.096 trillion. Our fixed income practice is one of the largest in the world, with management of approximately $1.3 trillion of fixed income assets globally. We have extensive expertise and as a result, significant client holdings in securitized assets totaling more than $141 billion; including approximately $93 billion in agency mortgage-backed securities, $4 billion in non-agency residential mortgage-backed securities, $21 billion in commercial mortgage-backed securities, $24 billion in asset-backed securities, and $6.5 billion in tender option bond securities as of September 30, 2013. We believe this makes us one of the largest, if not the largest, investors in securitized assets, which highlights our qualifications to comment on the Proposed Rules as well as the strong alignment of our interest with the orderly functioning of the asset-backed securities markets.

I. Overview and Guiding Principles

BlackRock continues to believe that promoting an orderly new issue process in the asset-backed securities market is vital to assure adequate flow of credit to a wide range of asset classes and industry sectors, all of which are critical in order to sustain economic recovery. A critical issue is the need for lending decisions across the economy, undertaken by a wide range of financial intermediaries, to be undertaken utilizing prudent and appropriate underwriting standards, both as to qualification of the borrower and as to the value of and risk factors associated with pledged collateral. BlackRock believes that securitization is an important means for financial institutions to fund their lending activities. Promotion of orderly oversight and regulation of the asset-backed markets is essential to restore investor confidence and, in turn, to assure that adequate and well-priced capital is continuously available. Restoring consistent capital flows in the residential mortgage market is a particularly important objective. In fact, this objective has been articulated by the Financial Stability Oversight Counsel ("FSOC") in its 2013 annual report which indicated that increasing the presence of private capital in assuming credit risk in housing finance remains a priority.

Securitization has many positive characteristics from the point of view of the sponsor, which must be aligned with protecting investors' interests in properly designed and executed programs. Benefits to issuers of asset-backed securities include asset sale treatment (which frees balance sheet capacity); clearly identified transfer of credit risk; relief from asset and liability management challenges for long-term, fixed-rate assets; and the creation of income streams resulting from servicing "off-balance sheet" assets. Asset-backed issuance also achieves a funding cost that is attractive to borrowers relative to other alternatives, as the rating on many of the securities issued are generally higher than the unsecured ratings of the sponsor due to their collateralized nature and the bankruptcy remoteness of the special purpose vehicle issuer. It is not only critical to preserve these key characteristics of asset-backed securities in order to protect the ultimate financial characteristics of the product, but also vital to protect investor interests in a manner that assures adequate and consistently fairly-priced capital.

BlackRock continues to endorse the effort to establish qualified credit standards that would exempt an issuer from credit risk retention requirements and commends the Agencies for revising the Proposed Rules to include more flexible and achievable standards. We have identified and have, to the extent still applicable, restated from our Original Comment Letter, several overarching issues and concerns that should be addressed in the rulemaking process, which are summarized below. We note that we have significant concerns with the Proposed Rules' application to several investment structures, particularly tender option bonds, asset-backed commercial paper programs and collateralized loan obligations. Our views on the Proposed Rules are highlighted below and discussed in more detail in our answers to the Agencies' specific requests for comment, beginning in Section III of this letter.

- **We Support Conformity Between the QM Standard and the QRM Standard**

In the case of the residential mortgage loan standards, we support the Agencies' proposal to conform the definition of a QRM to the definition of a Qualified Mortgage ("QM") under the Truth in Lending Act ("TILA") adopted by the Consumer Financial Protection Bureau ("CFPB"). We believe that adoption of the QM standard for QRM will incentivize lenders to conform lending standards to seek QRM eligibility, promote a consistent, holistic approach and support efficient capital markets. It would also minimize the potential costs associated with credit risk retention for a reasonable segment of the market, which is important to provide for the most cost-effective mortgage rates in order to promote the ongoing housing recovery. We believe that a "QM-plus" standard would significantly and unnecessarily impair the availability of credit and the scale of the market for mortgage securitizations.

- **Forms of Credit Risk Retention Should be Flexible While Maintaining an Appropriate Alignment of Issuer and Investor Interests**

We endorse the notion of providing multiple means for sponsors to fulfill credit risk retention requirements, as we believe this will result in sponsors selecting a method which will minimize the effective costs to them of the arrangement. We continue to advocate giving sponsors more flexibility than the requirements outlined in the Proposed Rules to satisfy credit risk retention through the combination of various means within a single transaction. We endorse the removal of the representative sample method as a risk retention option. However, we believe the proposed risk retention for CMBS can have a materially different effect depending on which party is required to retain the risk, and is more appropriately implemented through a structure where the risk retention is shared between the B-piece buyer (through the first-loss tranches of the transaction) and the issuer (through a vertical strip of the transaction) as discussed in more detail in Section III. B.5 below.

- **Refine the Credit Risk Provisions for Commercial Real Estate Mortgage Securitizations**

We endorse the effort to provide unique treatment for sponsors of commercial real estate mortgage loan securitizations through the industry practice of the sale of subordinate interests to qualified investors that conduct their own independent review of the loan pool. However, as noted below, there are several refinements that we feel are critical to be made to the Proposed Rules in this respect in order to maintain a viable CMBS new issue process and adequate flow of capital to the commercial real estate loan industry.

- **High Quality Underwriting Standards Should be Implemented**

BlackRock reiterates its belief that the funding and securitization process must start with high quality loans being originated. Many of the issues and challenges of the financial crisis began with poorly underwritten loans. Loan underwriting standards should be prudent, and must be evaluated and administered properly. We are encouraged by the ability-to-repay rules promulgated by the CFPB which become a part of the QRM definition through the incorporation of the CFPB's definition of QM.

- **National Servicing Standards Established for Residential Mortgage Loans Should be Expanded to Define Servicer Responsibilities to Investors and Should be Uniformly Implemented**

Many of the problems with mortgage securitizations were exacerbated by loan servicing inadequacies. Although we generally support the CFPB's final "National Mortgage Servicing Standards" proposed on January 17, 2013 that apply under both TILA and the Real Estate Settlement Procedures Act ("RESPA"), we believe that national mortgage servicing standards should be expanded to clearly delineate the roles and responsibilities of servicers to investors. If, for example, servicers had an affirmative responsibility, enforceable by sanctions, to report borrower and originator fraud to the appropriate authorities and securitization trustees, servicers would be discouraged from pursuing courses of actions that are not in the best interests of investors. Moreover, the clear delineation of servicers' responsibilities and duties to investors would help to curtail instances of servicer malfeasance.

Additionally, we strongly believe that such servicing standards should apply uniformly to all residential mortgage loans, not just QRM eligible loans, to promote soundness in the credit markets and fair and consistent treatment of borrowers and to protect investors' interests. We also encourage the uniform implementation of the servicing standards to all servicers of residential mortgages, including bank-affiliated servicers and servicers that are not affiliated with banks.

- **Servicers Should Have Greater Flexibility Surrounding Loan Modifications under the National Servicing Standards**

We also believe that the CFPB's servicing standards should allow servicers to have greater flexibility to exercise their professional judgment on the timing of loan modifications rather than requiring servicers to undertake immediate loss mitigation activities. Permitting servicers to use their professional judgment will help to avoid any unintended moral hazards. It will also permit servicers to focus on only those mortgage loans in need of immediate loan modifications to avoid reasonably foreseeable defaults. Moreover, requiring servicers to initiate immediate loss mitigation activities is inconsistent with the net present value approach adopted by the U.S. Department of the Treasury's Home Affordable Modification Program.

- **Holders of a First Lien Should Maintain Seniority to Second Lien Holders**

Much has been said about the importance of bringing back private capital to the residential mortgage securitization markets. Relatively few transactions have occurred in what was once a thriving market. A key issue continues to be the ongoing policy risk in the marketplace, perhaps as best illustrated by the treatment of investors in first lien mortgages. Contractual rights of the first lien holder must be affirmed and we oppose any provision that would encourage a modification of a first-lien mortgage loan prior to the write-off of any second lien loans. We continue to be concerned about conflicts of interest arising from a sponsor or its affiliate acting as a servicer in a securitization while holding a junior lien on the same property and recommend clarification relating to the protection of first lien holders' legal rights.

- **Asset Information Should Be Transparent and Accessible**

The proposed disclosure requirements are helpful but we would prefer to see more specific requirements. Investors should have timely and accurate information on the asset pool, including all relevant credit performance statistics at the point of issuance and on an ongoing basis. It is critical that information be made available on a timely basis through means that are not impacted by any conflict with or control by the sponsor, the servicer or other parties to the transaction. Transparency of asset information will benefit investors, sponsors and servicers by equalizing the data evaluated as part of the investment decision-making process at issuance and during the ongoing servicing of the assets. Although we understand the need to protect the confidentiality of certain asset information, this need for protection should be balanced against investors' need for accurate information. We note that the SEC has not yet adopted additional regulations addressing disclosure in ABS transactions as contemplated by Section 942 of the Dodd-Frank Act.

- **Conflicts of Interest Should be Identified and Managed Properly**

Any potential conflicts between the sponsor and/or the servicer and investors should be clearly identified and their impact should be mitigated through careful commercially-documented terms that are fully disclosed. The potential conflicts that may arise over time between different classes of holders in the asset-backed transaction should be recognized and contractual procedures to address such conflicts should be identified and clearly disclosed, including full and democratic dissemination of information to decrease the impact of any information arbitrage between the parties.

- **Interests Between Sponsors and Investors Should be Aligned**

Recognizing that asset-backed securitization is a risk transfer between the sponsor and the investors in the resultant securities, it is critical to have full and clear disclosure of the nature of all risks being transferred, both at the asset level and as a consequence of the structural characteristics of the securitization's terms. Efforts should be made to promote accountability through the implementation of appropriate credit risk retention by sponsors with respect to higher-risk pools.

- **Implement Appropriately Flexible Qualified Credit Standards**

We endorse the concept of evaluating qualifying loan exemptions on an individual loan basis as opposed to a pooling basis. We think this will minimize abuses and better protect investor interests. However, we continue to believe that a one-size-fits-all approach is not appropriate.

- **Consider Broader Relief from Credit Risk Transfer Requirements for Other Asset Classes (auto loans, tender option bonds, asset-backed commercial paper and open-market collateralized loan obligations)**

We support broader relief from credit risk transfer requirements for asset classes where credit abuse generally has not occurred or has been mitigated through the existing structures, sponsors or servicers in the markets. In particular, we restate or note that:

  - The proposed qualification standards for an exemption from credit risk retention for automobile loans continue to be overly conservative given the characteristics of that market and its pool of borrowers.

  - We commend the drafting of the exemption for municipal securities to include tender option bonds collateralized by municipal securities; however, we believe a few critical adjustments are required to implement the exemption appropriately, as described below in Section III. B.8.

  - We are in favor of the revisions made to the criteria for asset-backed commercial paper issuances; however, additional revisions are necessary to ensure coverage of the types of programs predominantly available in the current market, as described below in Section III. B.4.

  - We have concerns regarding the proposals with respect to open-market collateralized loan obligation ("CLO") transactions, as described in more detail in Section III. B.7. We believe that the proper focus of the risk retention regulations should be on sponsored asset-backed securities which, in our view, are quite distinguishable from open-market CLOs. . Should the Agencies determine to impose risk retention requirements on open-market CLOs, the Proposed Rules risk causing a contraction in the CLO market which could be expected to impact the corporate credit markets, given the importance of CLOs as acquirers of corporate bank loans.

- **Elimination of the Proposed Premium Cash Capture Reserve Account Provisions and the Representative Sample**

BlackRock agrees with the Agencies' removal of the premium capture cash reserve account ("PCCRA") as provided for in the Proposed Rules. We also endorse the Agencies' removal of the representative sample method of credit risk retention from the Proposed Rules.

<u>II. General Definitions and Scope</u>

We do not have any new comments on this Section of the Proposed Rules.

III. General Risk Retention Requirement

A. Minimum Risk Retention Required

BlackRock continues to be supportive in principle of the minimum requirement of 5% risk retention by securitization sponsors with an appropriate exception for QRM eligible residential mortgage pools and other qualified credit standards for other asset types or other exemptions as discussed in this letter. We believe that such a rule will promote higher quality lending, protect investor interests, and sharply limit an "originate to sell" business model.

B. Permissible Forms of Risk Retention – Menu of Options

With some exceptions as noted below, we are supportive of offering sponsors multiple avenues to fulfill their risk retention requirements, including by combining vertical risk, horizontal risk and L-shaped options into a flexible risk retention option. By allowing sponsors to satisfy the risk retention requirement through a variety of options, investor protection can be achieved while simultaneously allowing issuers to optimize their financial, capital and accounting outcomes with respect to a transaction. We think this will prove useful to optimize the cost of capital in a securitization which, in turn, will pass the optimal and most competitive rates through to borrowers. We support the proposed requirement that sponsors measure risk using a fair value framework. We believe that the fair value standard more accurately reflects the economics to the sponsor.

We agree with the Agencies' elimination of the representative sample method of risk retention in the Proposed Rules.

BlackRock believes that it is reasonable to consider allowing the sponsor to transfer the risk retention holding at some point prior to the full maturity of the transaction. In the case of residential mortgage securitizations, the full final maturity is typically 30 years which seems to be an unreasonably long holding period. For residential mortgage loans, we believe that the sponsor's holding period should be calibrated in accordance with the risk associated with those residential mortgage loans. Thus, while we think it would be reasonable for the sponsor to be able to transfer the credit risk retention interests after a period of 5 years subject to the absence of litigation and maintenance of pre-agreed specific performance criteria for lower risk mortgage loans, we think it is appropriate to have a longer holding period for higher risk mortgage loans.

We concur with the proposed transfer procedures relative to CMBS issuance in the Proposed Rules, which conform to existing procedures in that market.

From an investor's perspective, we believe that numerous issues of significance continue to exist with respect to asset-backed securities and should be resolved, including the SEC adopting additional regulations addressing disclosure in ABS transactions as contemplated by Section 942 (b) of the Dodd-Frank Act as well as a uniform national mortgage servicing standard. We also continue to believe there should be improvements and clarity in representations and warranties in securitization transactions and that investors should be in a position to ensure the enforcement of remedies associated with the breach of representations and warranties, in a conflict-free environment.

1. Standard Risk Retention
    a. Overview of Original Proposal and Public Comments
    b. Proposed Combined Risk Retention Option

BlackRock continues to believe that vertical risk retention is the arrangement that is the least likely to result in conflicts between the sponsor and investors, given the sponsor's proportionate exposure across the entire transaction. We think it is a very effective means of promoting alignment of interest between sponsors and investors. The proposed combination of the horizontal, vertical and L-shaped risk retention option is an improvement on the Original Proposed Rules; however, we note a few limitations with this approach, such as with respect to CMBS transactions.

The horizontal risk retention option creates the largest potential conflict of interest between the sponsor and the holders of the other classes of securities, to the extent the servicer has control over decisions that could optimize the value of this particular tranche but are not aligned with the optimized interests of the other and much larger tranches.

In response to the Request for Comment ("RFC") 1(a) and (b): With respect to CMBS, when the 5% risk retention is shared between the B-piece buyer (through the first-loss tranches of the transaction) and the issuer (through a vertical strip of the transaction), we believe there is a proper alignment of interests which should result in higher quality transactions. We refer to this structure as an "issuer/B-piece shared risk retention structure." However, under the proposal, the issuer has the option to structure the transaction such that the entire 5% can be placed with a B-piece buyer, which we believe may incentivize the issuer to originate lower quality (and higher margin) collateral in order to offset the economic impact of the liquidity premium charged by the purchaser for the incremental investment grade securities captured under retention. The full placement of the 5% to the B-piece buyer would encumber investment grade securities traditionally purchased by a different buyer base. We believe that the purpose of the Proposed Rules would be better implemented with an issuer/B-piece shared risk retention structure where the issuer retains some "skin in the game". This structure more appropriately aligns the interests and incentives of issuers and investors. Therefore, we believe that an issuer/B-piece shared risk retention structure should be a requirement rather than an option. If an issuer/B-piece shared risk retention structure is merely an "option" to the issuer, we believe it will be a rarely utilized, distant second choice to the placement of the 5% risk retention with a third party B-Piece buyer.

If left as an option for the issuer, we would favor reducing the B-piece retention closer to 2.5%, an amount consistent with what is currently held in the markets, and if necessary, increase retention beyond five years on that portion. Simply put, as currently proposed, we believe the emphasis is too much on "risk" rather than "retention," as the Proposed Rules would effectively require retention of investment grade securities. By adjusting down the B-piece retention, the overall cost of the product would remain similar to today and thus not incentivize lower quality collateral origination, while a longer retention period would still impose a holding term that encourages prudent underwriting.

Alternatively, if the standard in the final rule is 5%, then we would recommend allowing a horizontal split of the bottom 5% into a 2.5% junior class and a 2.5% senior class, which could be held by two different investors. The senior class should have a much shorter retention period than five years (we would recommend one year). A five-year requirement for the senior class would impose a higher level of illiquidity compared to other fixed income products with similar risk profiles.

We have no additional comments in response to RFCs 2(a) to 5(b).

In response to RFC 6: We believe that single borrower transactions should be exempt from the risk retention requirements as they are more akin to individual credit exposure securities, such as corporate bonds. These transactions are typically issued through Rule 144A transactions where the investor can conduct in-depth diligence and obtain additional information to draw conclusions on the security backed by the single loan. We believe that imposing risk retention may result in making these transactions cost-prohibitive and stymie the recent uptick in origination in what a lower leveraged, higher quality part of the market.

We have no additional comments in response to RFC 7.

In response to RFC 8(a): We generally agree that the proposed "menu of options approach" to risk retention is appropriate and sponsors should be able to satisfy the risk retention requirement through a variety of options as they deem appropriate. We continue to believe that the Agencies should generally not mandate that sponsors use a particular form of risk retention for specific types of asset classes or specific types of transactions, unless the use of a particular form or type of risk retention undermines the alignment of interest or skews the normal operation of the market. Instead, sponsors should select the option achieving the best accounting, capital and cost alternative for their circumstances, which will result in the lowest cost of capital being passed on to borrowers. However, as noted elsewhere in our letter, we believe that for CMBS, an issuer/B-piece shared risk retention structure is more appropriate.

In response to RFC 8(b): The proposed “menu of options approach” furthers the objectives of the statute to provide securitizers with an incentive to monitor and control the underwriting quality of securitized assets and to help align incentives among originators, sponsors and investors.

We have no additional comments in response to RFCs 9(a) to 14(c).

c. Alternative Eligible Horizontal Residual Interest Proposal

We have no additional comments on this Section or in response to RFCs 15(a) to 22(b).

2. Revolving Asset Master Trusts

Retention of a 5% Seller's Interest in a revolving asset master trust should be permitted to satisfy a base risk retention requirement. We continue to be supportive of an alternative that exposes the holder of the Seller's Interest to risk that is no less than the risk borne by the ABS investors on the asset pool.

We have no additional comments in response to RFCs 23 to 30.

3. Representative Sample

BlackRock agrees with the Agencies' removal of the representative sample method of risk retention from the Proposed Rules for the reasons set forth in our Original Comment Letter.

In response to RFC 31(a): No, a representative sample option should not be included.

We have no additional comments in response to RFCs 31(b) and (c).

4. Asset-Backed Commercial Paper (“ABCP”) Conduits

The Proposed Rules include a specific exemption from the general risk retention requirements for eligible ABCP conduits. The Agencies state that they have revised the Proposed Rules to provide more flexibility to accommodate the common structures of ABCP conduits. Overall, we believe the Proposed Rules on ABCP are an improvement over the Original Proposed Rules; however, if enacted as currently drafted, the Proposed Rules would increase the economic costs of those banks that currently sponsor a multiseller ABCP conduit and may create conditions that lead to more downsizing of the industry in terms of ABCP outstanding and the number of ABCP conduit sponsors. The Proposed Rules would likely increase the legal and indemnification costs of both the bank sponsors of these vehicles and originator-sellers. We believe that many originator-sellers may choose not to use ABCP financing for working capital and liquidity needs (through the monetization of the clients' receivables and loans) because of the increased economic, legal, and regulatory costs pertaining to the new proposals.

ABCP programs may be reduced by mandating that bank sponsors of partially-supported ABCP conduits convert to fully-supported ABCP conduits if the bank sponsors choose not to cash fund a horizontal credit reserve or take a minimum 5% vertical slice interest in their sponsored conduit. In summary, additional economic, legal, and regulatory costs will be created for both the banks that sponsor these conduits and their respective originator-sellers. We believe that most conduits do not meet the conditions to be an eligible ABCP conduit so there will be additional costs.

In response to RFC 32(a): We believe that high quality underwriting of ABCP is already present in the multi-seller ABCP conduits operating in the current markets. We believe this is the case in part because both the bank sponsors and originator-sellers themselves already have material “skin in the game”.

In response to RFC 32(b): We believe that "Eligible ABCP Conduit" should be defined to address the following:

- Originator-seller asset pools should be underwritten to a high investment grade or 1st Tier standard as a result of strict eligibility criteria pertaining to the receivables/loans financed in the pools and the appropriately sized originator—seller retained credit enhancement structured in each pool.

- The bank sponsor should dynamically manage and monitor each of the asset pools in the Program through continuous collaboration with the originator-sellers to assure that each pool maintains a 1st Tier eligibility standard. If the asset pool is in danger of not being considered 1st Tier, then remedial action must be taken by the bank sponsor and originator-seller to reduce the risks of that pool in the Program.

- The bank sponsor must retain a minimum 5% credit risk retention strip as a percentage of the Program's commercial paper outstanding. This enhancement could be funded (e.g., through a cash reserve) or through a cash substitute in the form of an irrevocable, unconditional letter of credit or credit facility.

- Either the bank sponsor or a 1st Tier regulated liquidity provider must provide 100% committed backstop liquidity facilities to the Program. If each of the underlying asset pools is deemed to meet a 1st Tier standard, then these committed liquidity facilities can be limited to financing performing receivables if drawn, which is the nature of a partially-supported ABCP conduit. If the committed liquidity facilities provide funding when drawn upon regardless of the performance of the asset pools, then the mandatory maintenance of a 1st Tier standard for the asset pools is not necessary, which is the nature of "fully-supported ABCP conduits".

In response to RFC 32(c): Yes, ABCP conduits typically have 100 percent liquidity coverage. The committed liquidity facilities usually provided by the bank sponsor of the conduits themselves can either fund for performing receivables in the case of partially-supported ABCP conduits or for both performing and delinquent receivables in fully-supported ABCP conduits.

We do not have any estimates in response to RFC 32(d).

In response to RFC 33(a): No, ABCP conduits do not only purchase assets directly from intermediate SPVs; they also directly finance receivables/loans which are not asset-backed securities.

We do not have any additional comments in response to RFCs 33(b), 34(a) and (b).

In response to RFCs 34(c) and (d): We do not believe it is an appropriate requirement that an ABCP conduit relying on the noted option may not purchase receivables directly from the originator. Many asset pools are financed directly by the ABCP conduit itself and the asset pools financed in this manner have performed in a comparable manner to that of ABS interests issued by intermediate SPVs.

In response to RFCs 35(a) and (b): We believe it is an appropriate requirement that an ABCP conduit relying on this option may not purchase ABS interests in the secondary market. If the ABCP conduit purchases ABS in the secondary market, then it is typically a securities arbitrage conduit; these types of conduits have generally been phased out of existence subsequent to the 2008 financial crisis.

In response to RFC 35(c): We believe that the proposed ABCP option could impede the ability to finance through an ABCP conduit assets that have been acquired in connection with certain business combinations. In addition, the proposed definition could preclude an Eligible ABCP Conduit from providing financing for warehousing transactions.

In response to RFCs 36(a) and (b): On a regular basis, ABCP conduits primarily finance both commercial and consumer receivables/loans. Single seller and multi-seller ABCP conduits typically do not acquire negotiated corporate debt securities in a frequent manner. We estimate that a very small portion of global ABCP outstanding was issued by such conduits.

In response to RFC 37(a): We believe that ABCP conduits no longer typically purchase ABS in the secondary market.

In response to RFC 38: With respect to ABCP conduits that purchase assets that do not meet the requirements of the proposal, we estimate that a significant percentage of such ABCP conduits' assets do not meet the requirements.

In response to RFCs 39(a), (b) and (c): We believe that the Agencies should allow multiple eligible liquidity providers for purposes of the ABCP risk retention options, so long as the Eligible Liquidity Provider meets a 1st Tier standard. We do not believe this allowance should be limited to special circumstances. Further, we believe the Agencies should allow a liquidity provider to provide liquidity with respect to a specific ABS interest.

In response to RFCs 40(a) and (b): We believe that the definition of majority-owned originator-seller affiliate appropriately captures companies that are affiliated with an originator-seller because a 50% controlling interest usually means that the parent has effective control of the subsidiary.

In response to RFC 41 and RFCs 42(a) and (b): We note that the final rules should not require disclosure of the originator seller in the case of non-compliance by the originator seller. We believe that under current market conditions and structures, such disclosure could risk the collapse of the particular ABCP conduit and pose a contagion risk to other ABCP conduits.

For these reasons, we also believe that the final rules should not require disclose to ABCP investors in all cases of a violation.

We have no additional comments in response to RFC 43.

In response to RFC 44: We believe that the rule should provide further clarity as to who will be deemed a sponsor of ABCP issued by an ABCP conduit.

We have no additional comments in response to RFCs 45(a) and (c).

5. Commercial Mortgage-Backed Securities

BlackRock supports the retention of the first-loss position by a third-party purchaser with respect to securitizations of commercial mortgages. We believe that the B-Piece buyers provide a strong check and balance to the CMBS market. The historical business model was critical in attracting capital to the origination of commercial real estate ("CRE") loans across the credit spectrum; the incentives of the model were more effectively aligned in the CMBS market due to the presence of B-Piece buyers. The B-Piece buyer had the ability to reject CRE loans or demand the restructure of loans prior to going into the securitization transaction, thus providing loan-by-loan independent view of the portfolio prior to securitization. This is the same level of investor protection the Agencies are attempting to reinstate with the Proposed Rules. However, BlackRock believes that the incremental retention over and above the typical 2.5% B-piece buyer retention is most appropriately retained by the issuer, through an issuer/B-piece shared risk retention structure. We believe that the Agencies are correct in restricting the transfer to two methods: (1) sponsor retention of 5% of the first loss position in the capital structure of a deal; or (2) the restrictive sale(s) of the B-Piece to a set of qualified buyers that would not be able to utilize non-recourse financing.

d. Transfer of B-Piece.

We do not have any additional comments on this Section.

In response to RFC 46: We note that we believe a five-year holding period prior to transfer of the B-piece is too long in the proposed form. If a five-year period is imposed, we would suggest adoption of a structure that permits less than 5% retention.

We do not have any additional comments in response to RFCs 47(a) and (b).

In response to RFC 48(a): We continue to agree that a third party purchaser should be allowed to purchase the B-Piece. However, BlackRock believes that such B-Piece buyer should be a 'qualified B-Piece buyer' based on certain predetermined criteria of experience, financial analysis capability, capability to direct the special servicer and certain financial capabilities to sustain some losses. In addition, the third party purchaser should be able to aggregate positions held by multiple funds under management by the same investment adviser or its affiliates for determining eligibility of the third party purchaser.

We have no additional comments in response to RFCs 49(a) and (b).

6. Government-Sponsored Enterprises

BlackRock continues to support the proposed treatment of the government sponsored entities ("GSE's") in the Proposed Rules. We believe the fact that the GSE's all provide full guarantee of timely principal and interest on their securitizations more than fulfills the letter and spirit of the Proposed Rules and hence qualifies them for this exemption.

7. Open Market Collateralized Loan Obligations

As stated above, BlackRock has concerns with the Agencies' current proposals with respect to open-market CLO transactions. As an initial matter, we believe that open-market CLOs, managed by professional investment firms independent of the sellers of the loans, are wholly different from the sponsored asset-backed securities that we believe are the proper focus of the risk retention regulations. We believe that it is significant that open-market CLOs do not utilize the "originate to sell" business model referenced above. It is noteworthy in our view that to the extent that Section 15G addresses vehicles similar to CLOs at all, it treats them differently than sponsored asset-backed securities. Section 15G(c)(1)(B) prescribes that regulations shall require "a securitizer" to retain 5 percent of the credit risk for any asset "transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer;" by contrast, Section 15G(c)(1)(F) calls simply for "appropriate standards for retention of an economic interest with respect to collateralized debt obligations..."

As stated above, the Proposed Rules risk causing the CLO market to contract considerably. This contraction could be expected to significantly impact the corporate credit markets given the current, important role played by CLOs as acquirers of corporate bank loans.

Even if the Agencies determine to essentially treat open-market CLOs as if they were sponsored asset-backed securities and focus on a credit risk retention test, we respectfully submit that the Agencies' current proposals are not workable. We do appreciate that the Agencies appear to have recognized that it is not practical to expect CLO managers to purchase CLO-issued securities equal to 5% of the face value of a CLO's assets. However, the alternative that the Agencies set forth -- that lead arrangers for loans in which CLOs invest would be required to hold rather than sell a portion of the loans they arrange – is also not practical. While BlackRock does not currently serve as an arranging bank, we have no expectation that arranging banks will change their models this radically.

We appreciate the Agencies' request for comment on whether a requirement for a CLO manager to retain risk in the form of unfunded notes and equity securities would be a reasonable alternative. The Agencies indicate that this has been proposed by an industry commenter. BlackRock believes that this is a very reasonable alternative. With respect to the question, "How would this meet the requirements and purposes of Section 15G of the Exchange Act?", we return to the language of Section 15G(c)(1)(F). We believe this alternative would represent an "appropriate standard for retention of an economic interest" – a very meaningful economic interest, tracking the 5% requirement for sponsored asset-backed securities – with respect to the variant on collateralized debt obligations that has been the most reliable for investors.

We encourage the Agencies to consider other alternative approaches to "appropriate standards for retention of an economic interest with respect to" collateralized loan obligations, which would involve significantly less risk of harm to the CLO and bank loan markets. For example, we encourage the Agencies to consider a standard whereby an economic interest is required to be retained by a party coordinating with a CLO manager (e.g., a significant equity investor that is involved in selection of the loans to be held by the CLO vehicle). This has some similarity to the Agencies' proposal for loan arrangers to retain risk, but here the entity retaining risk is arguably more connected to the particular CLO vehicle.

Another approach that has been discussed that we believe is sensible is the reduction of any risk retention requirement on a pro rata basis to the extent that the loans in a CLO are of a certain quality – qualified bank loans, in other words, akin to QRMs in the RMBS context. As evidenced by CLOs' performance through the credit crisis, and the resurgence of CLOs since the credit crisis, higher-quality loans present comparatively limited credit risk, and thus limited investment risk to holders in CLO vehicles, which are overcollateralized.

We have no additional comments in response to RFC 50(a) to RFC 66(b).

8. Municipal Bond "Repackaging" Securitizations

We continue to believe that the policies underlying Section 15G of the Exchange Act are incongruent to the tender option bond market, chiefly because a tender option bond program is not a risk-transferring instrument, but is instead an efficient method of providing short-term financing for long-term tax-exempt assets that have already been underwritten and issued. Despite superficial similarities to asset-backed securities, tender option bond programs are economically very similar to repurchase transactions, and are materially distinct from a typical asset-backed security where title to the underlying collateral is permanently transferred to the issuer. However, because of the tax treatment of the tax-exempt securities underlying tender option bond programs, more traditional methods of financing (such as repurchase transactions) are uneconomical, making tender option bond programs the only economically viable method for financing long-term, tax-exempt securities on a short-term basis.

Because tender option bond programs provide significant liquidity for long-term municipal bonds, and because there is comparatively little demand for long-term municipal bonds, tender option bond programs serve a critical function in the municipal bond market. As a result, we believe that a reduction in the availability of tender option bond market financing could have an adverse effect on the municipal bond market, possibly increasing interest rates paid by municipal issuers, decreasing liquidity in their securities, and creating other unanticipated consequences.

We believe that the Proposed Rules will not accommodate the risk retention mechanisms currently utilized by the tender option bond market, but may instead disrupt the market in the short term, and possibly eliminate portions of the market in the long term. The widespread unwinding of existing tender option bond transactions would also likely cause disruptions in the broader municipal bond market, negatively affecting both municipal issuers and investors. We do not believe that this was the intent of the Proposed Rules, and therefore recommend that the Agencies make the technical changes and the clarifications set forth below, each of which we believe to be necessary to allow the market to function without disruption.

Definitions of "Qualified Tender Option Bond Entity" and "Tender Option Bond". We recommend that the Agencies adopt the following definitions of "Qualified Tender Option Bond Entity" and "Tender Option Bond" that are based on the respective definitions set forth in the Proposed Rules, and reflect technical modifications we believe are necessary to avoid disruptions to the tender option bond market:

Qualified Tender Option Bond Entity means an issuing entity with respect to tender option bonds for which each of the following applies:

1. Only two classes of securities are issued: a tender option bond and a residual interest;

2. The holders of the tender option bonds must have the general right to tender such tender option bonds for purchase at par value plus accrued interest (if any), with such tender right supported or guaranteed by a liquidity facility or guarantee, except upon the occurrence of specified "tender option termination events", and as otherwise in accordance with IRS Revenue Procedure 2003-84;

3. The underlying collateral consists solely of assets the interest on which is excludable from gross income under Section 103 of the Internal Revenue Code, or beneficial interests in such assets;

4. The liquidity facility or guarantee is enforceable against the entity obligated to support or guarantee the purchase of the tender option bonds upon tender; and

5. The issuing entity qualifies for monthly closing elections pursuant to IRS Revenue Procedure 2003-84, as amended or supplemented from time to time.

Tender Option Bond means a security that has features that generally entitle the holders thereof to tender such security for purchase (except upon the occurrence of specified "tender option termination events") at a price equal to the par value thereof plus accrued interest thereon (if any) at the time of tender, and such purchase takes place within 397 days of such tender.

Although the tender option bond market is currently dominated by Rule 2a-7 money market funds, tender option bonds are occasionally downgraded, rendering them ineligible for purchase by money market funds under Rule 2a-7. When this happens, the tender option bonds are typically remarketed to a broader universe of investors. Without this flexibility, the tender option bond trust would be liquidated, potentially resulting in losses to both the residual holder and the money market funds. Moreover, changes in the money market industry could cause the primary source of tender option bond financing to shift to another product or industry. We note that there are existing cases of tender option bonds that are not Rule 2a-7 eligible.

Application to Third-Party Tender Option Bonds. The relief granted in the Proposed Rules appears to apply only to "sponsors" of a Qualified Tender Option Bond Entity. However, a residual holder might be a "third party investor" with "skin in the game". We recommend that the Agencies clarify that the relief also applies when the residual holder is a "third-party investor" (i.e., not an affiliate of the sponsor) in a Qualified Tender Option Bond Entity.

Tender option bond programs where the residual holder is a third-party (known as "third-party TOBs") are a large and important part of the tender option bond market. We believe that restricting relief to cases where the residual holder is the sponsor may cause third-party TOBs to become uneconomical, eliminating a significant source of funding and liquidity currently available to the municipal bond market, potentially increasing interest rates paid by municipal issuers, decreasing liquidity in their securities, and creating other unanticipated consequences.

Application to Investment Funds. We recommend that the Agencies grant relief to holders of residual interests in a Qualified Tender Option Bond Entity that are funds managed by an asset manager, by allowing such funds to qualify for relief based on the aggregate notional amount of the residuals held by funds managed by the same manager (or affiliates of that manager) at the closing of a tender option bond transaction.

Residual holders that are funds typically co-invest with other funds managed by the same manager (or affiliates of that manager). This is not only current market practice, but necessary to achieve the scale of investment necessary to support a marketable tender option bond program.

Request for Explicit Relief for Residual Interests; Clarification of "Eligible Vertical Interest". While we appreciate the relief granted in the Proposed Rules, we believe that explicit relief for holders of residual interests in a Qualified Tender Option Bond Entity would provide greater certainty and clarity to the tender option bond market.

If such explicit relief for holders of residual interests is not granted, then we recommend that the Agencies clarify that by "upon the occurrence of a "tender option termination event" ... [the security meets the] requirements of an eligible vertical interest", the Agencies mean that a residual interest in a Qualified Tender Option Bond Entity, which upon the occurrence of a "tender option termination event" entitles the holder thereof to a pro rata share of the assets held by the Qualified Tender Option Bond Entity, would be eligible for the relief granted in the Proposed Rules.

If this is the case, then we believe that a typical residual interest issued by a tender option bond trust would satisfy the foregoing, since upon the occurrence of a tender option termination event, both the residual holders and the tender option bond holders are typically entitled to a pro rata share of the underlying assets (or proceeds thereof), effectively reducing both classes of securities to a single vertical security that shares ratably in the underlying assets (or proceeds thereof).

In response to RFCs 67(a) and (b): If our suggested changes above are adopted and our recommended clarifications above are made, then we believe that the relief for tender option bonds in the Proposed Rules will accommodate existing market practice.

In response to RFC 68(a): If our suggested changes above are adopted and our recommended clarifications above are made, then we believe that incentives of sponsors and investors will be adequately aligned.

In response to RFC 68(b): No, we do not believe any additional requirements other than those noted above should be added.

9. Premium Capture Cash Reserve Account

BlackRock supports the removal of the PCCRA concept as set forth in the Original Proposed Rules. We have no additional comments in response to RFCs 69(a) to 70(b).

C. Allocation to the Originator

BlackRock continues to support the rights afforded in the Proposed Rules that allow the sponsor to allocate at least a portion of the credit risk it is required to retain to originators of the securitized assets. This feature, in our view, promotes soundness and accountability since the originator has the closest connection to and best knowledge of the borrower on the loan obligations. Further, it promotes the viability of sponsored securitization conduits, which afford loan originators of all sizes access to the market and the advantages of participating in larger, pooled securitizations.

We have no additional comments in response to RFCs 71(a) or (b).

D. Hedging, Transfer and Financing Restrictions

For commercial mortgages, the Dodd-Frank Act essentially allows the sponsor to transfer the retained interest to a "qualified transferee" in the form of the B-piece buyer, who meets all of the qualifications outlined in the statute (e.g., retaining a first-loss position, conducting the requisite diligence, etc.). As the Dodd-Frank Act allows a CMBS sponsor to transfer the retained interest to a B-piece buyer, BlackRock recommends that a B-piece buyer be permitted to transfer the retained interest to a "qualified transferee" To create proper alignment of interests, the "qualified transferee" should be required to meet the same criteria as are set forth in the final rule for B-piece buyer retention, or the requirements for a Qualified Institutional Buyer in SEC Rule 144A or for an Institutional Accredited Investor. For commercial mortgages, we believe the "qualified transferee" concept would facilitate the appropriate alignment of risk, encourage sound underwriting and provide liquidity for transferors.

We have no additional comments in response to RFCs 72(a) or (b).

<u>IV. General Exemptions</u>

BlackRock has no new comments on Sections IV.A to IV.E, or on RFCs 73 to 75.

BlackRock has the following comment on Section IV.F, Sunset on Hedging and Transfer Restrictions. BlackRock supports the Agencies inclusion of sunset provisions on residential mortgage loans but believes that these sunset provisions should be calibrated according to the risk of the product.

In response to RFC 76(a): Historically, five years would be an adequate time period for egregious origination defects to manifest themselves in most residential mortgage loans; thus, aligning the interests of originators and investors. However, we would note that traditional shifting-interest schedules are more onerous than the Proposed Rules contemplate, typically only allowing a partial step-down after five years subject to performance triggers, and defaults may actually be at their peak at the time that these sunset provisions are permitted under the Proposed Rules. Thus, the sunset provisions in the Proposed Rules should provide for more flexible calibrations.

In response to RFC 77(a) and (b): We believe that is it appropriate to allow sunset provisions for all RMBS; however, the sunset provisions should be calibrated differently depending on the risk associated with the particular RMBS. Specifically, the shifting-interest schedule of amortizing RMBS has historically stepped down beginning after 5 years whereas the step-down period on interest-only loans did not occur until 7 years. Thus, we believe that there should be a different retention period for higher risk mortgage loans.

In response to RFC 77(c): We believe that calibrating sunset provisions for RMBS based on risk would reduce the prevalence of higher risk residential mortgage loans in the market. This approach would also discourage the co-mingling of high-risk and lower-risk residential mortgages as the risk retention requirements would be materially different resulting in fewer defaults in the residential mortgage securitization market.

<u>V. Reduced Risk Retention Requirements and Underwriting Standards for ABS Backed by Qualifying Commercial, Commercial Real Estate, or Automobile Loans</u>

We do not have any comments in response to RFC 78(a) to RFC 78(b).

A. Qualifying Commercial Loans

We do not have any additional comments on this Section of the Proposed Rules or in response to RFCs 79(a) to 80(b).

B. Qualifying Commercial Real Estate Loans

We do not have any additional comments on this Section of the Proposed Rules or in response to RFCs 81(a) to 82.

C. Qualifying Automobile Loans

BlackRock continues to endorse the effort to establish a Qualified Auto Loan (QAL) standard. However, we believe that the proposed eligibility criteria are too restrictive and as a result most auto loans being originated under current market practices would not qualify under the Proposed Rules. BlackRock recommends changes to the QAL eligibility criteria as set forth below in order to be more consistent with current automobile loan origination practices.

1. Ability to Repay

BlackRock continues to believe that the QAL eligibility for an individual loan should provide for more flexible ability to pay criteria, or adopt a higher maximum DTI ratio. The required maximum 36% DTI ratio for a borrower under a qualifying auto loan would result in very few auto loans qualifying for the exemption. Therefore, it is desirable to have a higher DTI limit or remove it altogether.

2. Loan Terms

We commend the Agencies for revising the QAL eligibility criteria loan terms to allow loans up to the lesser of six years (or 10 years less the vehicle's age). We also agree with the requirement that borrowers make level monthly payments that fully amortize the loan over its term.

3. Reviewing Credit History

We have no additional comments on this Section.

4. Loan-to-Value

We believe that the proposed down payment requirement for a QAL is onerous and does not reflect current market practice in automobile financing. We believe that a lower down payment requirement on an otherwise conservatively underwritten automobile loan will not pose any significant additional credit risk.

In response to RFC 83(a) and RFC 84: We reiterate that the 36% maximum DTI ratio and the 10% minimum down payment are unnecessarily stringent, and will likely result in higher automobile loan rates to otherwise qualified borrowers

D. Qualifying Asset Exemption

BlackRock has no comments on this Section of the Proposed Rules, or on RFCs 85(a) to 87(c).

E. Buyback Requirement

BlackRock has no comments on this Section of the Proposed Rules, or on RFC 88.

VI. Qualified Residential Mortgages

B. Approach to Defining Qualifying Residential Mortgages

Our view on the overall approach for defining QRMs is covered below.

In response to RFC 89(a) to RFC 89(c): We generally support the Agencies' proposal to align the definition of QRM with the definition of QM.

C. Proposed Definition of QRM

In response to RFC 90: We believe that the Proposed Rules balances the goals of ensuring high quality underwriting and appropriate risk management with the goal of giving creditworthy borrowers access to credit. Specifically, we support the Agencies decision to remove loan-to-value (LTV) ratio requirements in the definition of QRM.

In response to RFC 92(a): We continue to believe that the status of second liens, as subordinate to first liens, must be more clearly established by either allowing the first lien to disallow placement of a second lien, forcing the second lien holder to buy out the first lien, or forcing the second lien to be discharged in the event that a modification of the first lien becomes necessary.

In response to RFC 92(c): We believe that the goal of greater credit availability should not be facilitated in a manner which harms first lien holders. We believe that the best approach to down payment assistance is allowing higher-LTV first lien mortgages to qualify for QRM, with appropriate underwriting safeguards. A mechanism for enforcing proper lien priority is key to the re-establishment of second lien lending.

BlackRock has no additional comments in response to RFCs 93(a) to 93(b).

D. Exemption for QRMs

BlackRock endorses the effort to establish a QRM standard and agrees with the Agencies' proposal to align the definition of QRM with the definition of QM.

BlackRock has no additional comments in response to RFCs 94(a) to 94(b).

E. Repurchase of Loans Subsequently Determined to Be Non-Qualified after Closing

BlackRock continues to endorse the proposed effort to provide sponsor certification of controls and thoughtful requirements to repurchase loans to protect the integrity of the transaction and investor interests.

In response to RFC 95(a) and (b): Although we support the Agencies' buyback requirement under the QRM exemption, investors have historically preferred substitution of mortgage loans rather than repurchase in certain circumstances. Specifically, when the required repurchase of a mortgage loan would impact the value of the investment such as in the case of excess spread investments and premium senior bonds, investors may favor substituting mortgage loans with substantially similar attributes rather than requiring sponsors to repurchase the mortgage loan.

F. Request for Comment on Alternative QRM Approach

1. Description of Alternative Approach

We support the adoption of the QM standard for QRM, which would support conformity in understanding and application in the market. We believe that a "QM-plus" standard is unnecessary and that the "QRM-plus" standard described in the Proposed Rules, particularly with respect to LTV, is too restrictive and could invite second lien re-leveraging by the borrower.

BlackRock has no additional comments in response to RFCs 96(a) to RFC 99.

2. Mortgage Availability and Cost

BlackRock has no additional comments in response to RFCs 100(a) to RFC 101.

3. Private Securitization Activity

BlackRock has no additional comments in response to RFCs 102 to RFC 104.

4. Request for comment about the terms of the QM-plus approach

In response to RFCs 105 to RFC 107(c): We reiterate that the "QM-plus" standard described in the Proposed Rules would be too prescriptive and should not be adopted.

* * * * * * * * *

We thank the Agencies for the opportunity to comment on these Proposed Rules. We appreciate the Agencies' responsiveness to the issues we raised in our Original Comment Letter. We look forward to working with the Agencies further on this rulemaking process. If you have any questions or would like further information, please do not hesitate to contact me.

Sincerely,

Kevin G. Chavers
Managing Director
BlackRock, Inc.

Exhibit A

BLACKROCK

55 East 52nd Street
New York, NY 10055

July 28, 2011

Via electronic submission

Office of the Comptroller of the Currency
250 E Street, S.W., Mail Stop 2-3
Washington, DC 20219
Docket Number OCC-2011-0002

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

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

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

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

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
FR–5504–P–01: Credit Risk Retention

Re: Credit Risk Retention; Proposed Rules

Dear Ladies and Gentlemen:

The Department of the Treasury by its Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the U.S. Securities and Exchange Commission (the "Commission"), the Federal Housing Finance Agency (the "FHFA") and the Department of Housing and Urban Development ("HUD" and together with the OCC, the Board, the FDIC, the Commission, and the FHFA, the "Agencies") have requested public comments on the Proposed Rules entitled "Credit Risk Retention," Fed. Reg. 24,090 (April 29, 2011) (the "Proposed Rules"). Due to the tremendous potential impact of the Proposed Rules on the functioning of the capital markets and the orderly flow of credit throughout the economy, BlackRock Inc. ("BlackRock") welcomes the opportunity to express its views on the Proposed Rules.

We understand that the Proposed Rules would implement the credit risk retention requirements of Section 15G of the Securities and Exchange Act of 1934 ("Exchange Act") as added by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to generally require an ABS sponsor to retain not less than five percent of any asset that a sponsor, through the issuance of securitized debt obligations, transfers, sells or conveys to a third party. As one of the largest investors in the fixed income markets in general, with a significant focus on securitized debt products, BlackRock endorses the effort by the Agencies in the Proposed Rules to enhance and promote more uniform protection of investor interests. BlackRock believes that the Agencies should adopt a coherent set of regulations that provide for the coordinated and consistent treatment of regulated financial institutions and the asset-backed securities they issue or sponsor.

By way of background, BlackRock is one of the world's leading asset management firms, managing approximately $3.6 trillion on behalf of institutional and individual clients globally through a variety of products, including fixed income, equity, cash management, alternative investments, real estate and other advisory services. We manage assets on behalf of clients including corporate, public and multi-employer pension plans; sponsored mutual funds; endowments; foundations; charities; corporations; official institutions; and insurance companies and other financial institutions. Our fixed income practice is one of the largest in the world, with management of approximately $1.186 trillion of fixed income assets globally. We have an extremely strong specialization, and as a result, significant client holdings, in asset-backed securities totaling over $145.9 billion; of which over $16.4 billion are backed by residential mortgage loans (excluding federal GSE-guaranteed securities); over $29.8 billion are backed by commercial mortgage loans (excluding federal GSE-guaranteed securities); approximately $95 billion in federal GSE-guaranteed securities; and over $4.5 billion are other types of asset-backed securities. We believe this makes us one of the largest, if not the largest, investors in securitized assets, which highlights our qualifications to comment on the Proposed Rules as well as the strong alignment of interest of our objectives with the orderly functioning of the asset-backed securities markets.

I. Overview and Guiding Principles

BlackRock believes that promoting an orderly recovery in the new issue process in the asset-backed securities market is vital to assure adequate flow of credit to a wide range of asset classes and industry sectors, all of which are critical in order to sustain economic recovery. A critical issue is the need for lending decisions across the economy, undertaken by a wide range of financial intermediaries, to be undertaken utilizing prudent and appropriate underwriting standards, both as to qualification of the borrower and as to the value of and risk factors associated with pledged collateral, if any. BlackRock believes that securitization is a very important means for financial institutions to fund their lending activities. Promotion of orderly oversight and regulation of the asset-backed markets is essential to restore investor confidence and, in turn, to assure that adequate and well-priced capital is continuously available. Restoring consistent capital flows in the residential mortgage market, obviously the most stricken of all asset lending sectors, is particularly important given the objectives articulated by the Administration's housing reform initiatives which call for the systematic reduction of the market share of the federal mortgage government-sponsored entities ("GSEs").

Securitization has many positive characteristics from the point of view of the sponsor, which BlackRock feels can be aligned with protecting investors' interests in properly designed and executed programs. Benefits to issuers of asset-backed securities include asset sale treatment (which frees balance sheet capacity); clearly identified transfer of credit risk; relief from asset and liability management challenges for long-term, fixed-rate assets; and the creation of income streams resulting from servicing "off-balance sheet" assets. Asset-backed issuance also achieves a funding cost that is attractive to borrowers relative to other alternatives, as the rating on many of the securities issued are generally higher than the unsecured ratings of the sponsor due to their collateralized nature and the bankruptcy remoteness of the special purpose vehicle issuer. BlackRock believes that it is critical to preserve these key characteristics of asset-backed securities in order to protect the ultimate financial characteristics of the product while at the same time taking steps to protect investor interests in a manner that assures adequate and consistently fairly-priced capital.

We have identified several overarching issues and concerns that should be addressed in the rulemaking process, which are summarized below. BlackRock believes that many of these issues are addressed within the Proposed Rules; however, we have several concerns that we have highlighted below and discuss in more detail in our answers to the Agencies' specific requests for comment, beginning in Section III of this letter.

- **High Quality Mortgage Underwriting Standards Should be Implemented**

  The funding and securitization process must start with high quality mortgages being originated. Many of the issues and challenges of the financial crisis began with poorly underwritten loans. Loan underwriting standards should be prudent, and must be evaluated and administered properly.

- **National Loan Servicing Standards Regulation Should be Established for Residential Mortgage Loans, Applying to All Mortgages and Lenders**

  As we have seen, many of the problems with mortgage securitizations were subsequently exacerbated by loan servicing inadequacies. While we appreciate the effort made to identify default mitigation protections for the qualified residential mortgage ("QRM") standard, we think the overall approach is not sufficiently robust and that it would be preferable to incorporate these types of provisions in national mortgage servicing standards regulations that would apply uniformly to <u>all</u> residential mortgage loans (regardless of QRM-eligible status).

- **Holders of a First Lien Should Maintain Seniority to Second Lien Holders**

  Much has been said about the importance of bringing back private capital to the securitization markets and the sponsor role. Unfortunately, very few transactions have occurred in what was once a thriving market. A key issue is the treatment of investors in first lien mortgages. Contractual rights of the first lien holder must be affirmed. The Proposed Rules (i.e., through the QRM definition) provide protection at issuance for first lien holders, but should go further to ensure that second lien financing is not used to significantly increase the risk profile under the first lien.

- **Asset Information Should Be Transparent and Accessible**

  Investors should have timely and accurate information on the asset pool, including all relevant credit performance statistics at the point of issuance and on an ongoing basis. It is critical that information be made available on a timely basis through means that are not impacted by any conflict with or control by the sponsor, the servicer or other parties to the transaction. Transparency of asset information will benefit investors, sponsors and servicers by equalizing the data evaluated as part of the investment decision-making process at issuance and during the ongoing servicing of the assets.

- **Conflicts of Interest Should be Identified and Managed Properly**

  Any potential conflicts between the sponsor and/or the servicer and investors should be clearly identified and their impact should be mitigated through careful commercially-documented terms that are fully disclosed. The potential conflicts that may arise over time between different classes of holders in the asset-backed transaction should be recognized and contractual procedures to deal with such conflicts should be identified and clearly disclosed, including full and democratic dissemination of information to decrease the impact of any information arbitrage between the parties.

- **Interests Between Sponsors and Investors Should be Aligned**

  Recognizing that asset-backed securitization is a risk transfer between the sponsor and the investors in the resultant securities, it is critical to have full and clear disclosure of the nature of all risks being transferred, both at the asset level and as a consequence of the structural characteristics of the securitization's terms. Efforts should be made to promote accountability through the implementation of appropriate credit risk retention by sponsors with respect to higher-risk pools.

- **Reconsider the Definition of Qualified Credit Standards as an Exemption from the Credit Risk Retention Requirements**

  While we endorse the effort to establish qualified credit standards that would exempt an issuer from credit risk retention requirements, we believe the proposed standards are too conservative and include too small a universe of potential new loan originations, particularly in the case of residential and commercial real estate mortgage loans.

  In the case of residential mortgage loans, we believe a conservative QRM standard should be established that as a matter of course would be expected to accommodate between 40 and 60 percent of current loan production and establish the QRM standard as a practical industry best practice.

  In the case of the residential mortgage loan standards, lenders should be incentivized to conform lending standards to seek QRM eligibility, which will not occur if the standards are unachievable due to their degree of conservatism. It would also minimize the potential costs associated with credit risk retention for a reasonable segment of the market, which is important to provide for the most cost-effective mortgage rates in order to promote the ongoing housing recovery.

- **Implement More Flexible Qualified Credit Standards by Evaluating Individual Loans on a Matrix Basis, Particularly for Residential and Commercial Mortgages**

  We endorse the concept of evaluating qualifying loan exemptions on an individual loan basis as opposed to a pooling basis. We think this will minimize abuses and better protect investor interests. However, we believe that a one-size-fits-all approach is not appropriate. For an individual loan we believe that the credit standards should be defined on a matrix basis, which would allow a conservative loan underwriting factor to offset an aggressive loan underwriting factor up to predefined limits for individual factors (as defined in the matrix). For residential loans, the main variable factors within the matrix should be loan-to-value ratio, ability to repay and borrower's credit history. For commercial loans, the main variable factors within the matrix should be loan-to-value ratio and debt service coverage ratio which could be set by product type.

- **Forms of Credit Risk Retention Should be More Flexible**

  We endorse the notion of providing multiple means for sponsors to fulfill credit risk retention requirements, as we believe this will result in sponsors selecting a method which will minimize the effective costs to them of the arrangement (which will in turn be passed on in the form of lower costs to the borrowers). We advocate giving sponsors more flexibility than the requirements outlined in the Proposed Rules to satisfy credit risk retention through the combination of various means within a single transaction. However, we believe the representative sample method of credit risk retention should be removed as an option. Our views are described more fully below in Section III.B.5.

- **Eliminate the Proposed Premium Capture Cash Reserve Account Provisions**

  BlackRock believes the premium capture cash reserve account provisions should be eliminated from the Proposed Rules. As outlined below in Section III.B.9, we believe the method as described does not fairly characterize a sponsor's "gain" upon a securitization and could result from market moves during the accumulation period for originated collateral, with such amounts required to be deposited in the premium capture cash reserve account actually offset by losses on hedge transactions.

- **Refine the Credit Risk Transfer Provisions for Commercial Real Estate Mortgage Securitizations**

  We endorse the effort to provide unique treatment for sponsors of commercial real estate mortgage loan securitizations through the industry practice of the sale of subordinate interests to qualified investors that conduct their own independent review of the loan pool. However, as noted below in Section V, there are several refinements that we feel are critical to be made to the Proposed Rules in this respect in order to maintain a viable CMBS new issue process and adequate flow of capital to the commercial real estate loan industry.

- **Consider Broader Relief from Credit Risk Transfer Requirements for Asset Classes Where Credit Abuse Generally Has Not Occurred or Has Been Sufficiently Mitigated Through the Existing Structures, Sponsors or Servicers in the Markets.**

  We support broader relief from credit risk transfer requirements for asset classes (e.g., credit cards, auto loans, student loans, tender option bonds, and asset-backed commercial paper) where credit abuse generally has not occurred or has been mitigated through the existing structures, sponsors or servicers in the markets. In particular, we note that:

  - The proposed qualification standards for an exemption from credit risk retention for automobile loans are too conservative given the characteristics of that market and its pool of borrowers.

- The exemption for municipal securities should include tender option bonds collateralized by municipal securities.

- The criteria for asset-backed commercial paper issuances should be expanded to include the types of programs predominantly available in the current market.

II. General Definitions and Scope

BlackRock is supportive of the Agencies' effort to propose tighter regulation and controls with respect to asset-backed securitizations across the wide range of asset classes and structures. In our view, what is now referred to as "the shadow banking system" grew to tremendous scale during the credit bubble and the lack of clear definition, regulation and oversight clearly led to abuses, including insufficient representation of investors' interests. We believe that the Agencies are correct in focusing on various forms of securitized debt issuance, including term asset-backed securitizations, revolving trust structures and asset-backed commercial paper conduits, as all represented substantial scale in the marketplace at the peak of issuance for such products.

We also believe that thoughtful coordination beyond various initiatives must be undertaken to ensure sound capital market conditions, including conformity with the definition of a Qualified Mortgage under the Truth in Lending Act ("TILA"); strengthening of regulation and supervision of nationally recognized statistical rating agencies; greater reporting and certification requirements of asset-backed securities issuers; and adoption of national mortgage servicing standards. Together all of these actions must be completed and well-coordinated to ensure appropriate market transparency and investor protection.

We appreciate and support the differentiation that has been established between the treatment of different asset classes within securitized products, as clearly different facts and circumstances exist between these sectors, including the level of discipline among lenders and issuers during the credit bubble. BlackRock endorses the differentiated definition of sponsor and originator in the Proposed Rules, for the purpose of providing for the option to allocate risk retention responsibilities to the originator in certain circumstances. We generally support expanding the scope of this provision to make it more flexible, as we believe that the originator is in the most accountable position to understand and assume the risk given its close connection to the borrower.

To promote maximum flexibility in the future, BlackRock believes that it may be prudent to allow transactions with multiple sponsors to assume individual proportions of the risk retention responsibilities, rather than requiring one of the parties to assume the entirety of the risk retention. This could be defined to be allocated proportionately to asset contribution and would promote better accountability between the parties.

We do not believe that consideration of the risk of non-payment by the issuing entity, unrelated to the assets, is appropriate to consider in the Proposed Rules and the treatment of risk retention. It is important to preserve the bankruptcy-remote status of and accounting treatment for securitization in order to preserve the financial advantages of the product and promote the orderly flow of credit. While there may be numerous formation steps in any securitization, we believe that it is valid to look through the various steps and implement the risk retention rules only once and at the appropriate point for the benefit of the securitized debt holders. However, providing for adequate flexibility as to where in the securitization chain this is accomplished is critical to allow for sale treatment of a prospective issuance and thus the financing cost advantage of securitization which is passed on to borrowers in the form of lower borrowing rates.

III. General Risk Retention Requirement

A. Minimum 5 Percent Risk Retention Required

BlackRock is supportive in principle of the minimum requirement of 5% risk retention by securitization sponsors with an appropriate exception for QRM-eligible residential mortgage pools and other qualified credit standards for other asset types or other exemptions as discussed in this letter. We believe that such a rule will promote better lending quality; protect investor interests; and sharply limit the "originate to sell" business model, where sufficient incentives for prudent loan origination standards generally were not maintained.

B. Permissible Forms of Risk Retention

With some exceptions as noted below, we are supportive of offering sponsors multiple avenues to fulfill their risk retention requirements, including vertical risk, horizontal risk and L-shaped risk retention options. We recommend elimination of the representative sample method of risk retention for the reasons cited below. We recommend allowing sponsors to satisfy the risk retention requirement through a blended combination of the options, such that the investor protection can be achieved while simultaneously allowing issuers to optimize their financial, capital and accounting outcomes with respect to a transaction. We think this will prove useful to optimize the cost of capital in a securitization which, in turn, will pass the optimal and most competitive rates through to borrowers.

We think it is important to note that the proposed permissible risk retention options ultimately have different financial properties. However, as the financial characteristics of the individual risk retention options are quite different, the market value of the risk retention as a percentage of the market value of the whole transaction will generally be less than 5%, possibly significantly less than 5%. We point this out for clarification as, in our opinion, the actual "skin in the game" will be judged on a market value basis, and the various options are not likely to result in uniform characteristics.

For the reasons set forth below, BlackRock does not recommend adopting the provisions required by the Premium Capture Cash Reserve Account as set forth in the Proposed Rules.

BlackRock believes that it is reasonable to consider allowing the sponsor to transfer the risk retention holding at some point prior to the full maturity of the transaction. In the case of residential mortgage securitizations, the full final maturity is typically 30 years which seems to be an unreasonably long holding period. For residential mortgage loans, we think it would be reasonable for the sponsor to be able to transfer the credit risk retention interests, subject to all rights remaining in place for the subsequent holder, after a period of 5 years subject to absence of litigation and maintenance of pre-agreed specific performance criteria. We concur with the proposed transfer procedures relative to CMBS issuance in the Proposed Rules, which conform to existing procedures in that market.

From an investor's perspective, we believe that numerous issues of significance continue to exist with respect to asset-backed securities and should be resolved, including the Commission adopting additional regulations addressing disclosure in ABS transactions as contemplated by Section 942 (b) of the Dodd-Frank Act as well as a uniform national mortgage servicing standard. We also believe there should be improvements in representations and warranties in securitization transactions and that investors should be in a position to ensure the enforcement of remedies associated with the breach of representations and warranties, in a conflict-free environment. We note that on July 26, 2011, the Commission released a "Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment" (RIN 3235-AK37). While we have not had an opportunity to fully review the proposal and are not commenting on it here, we reiterate our general support for rules promoting greater transparency in securitization transactions, providing for enhanced means for communications among investors and providing additional means to enforce, and resolve disputes with respect to breaches of, representations and warranties.

We note that in fashioning appropriate risk retention requirements the Agencies should be cautious to avoid imposing requirements that could choke off sectors of the securitization market. We believe the differentiated treatment of commercial loans and commercial real estate loans in the Proposed Rules, for instance, is appropriate in light of the differentiated facts and circumstances of those products compared with residential mortgage products.

In response to the Request for Comment ("RFC"):

RFC 13. We agree that the proposed "menu of options approach" to risk retention is appropriate and sponsors should be able to satisfy the risk retention requirement through a combination of options as they deem appropriate. We note that we recommend elimination of the representative sample option, for the reasons set forth below.

RFC 14(a). We believe that the Agencies should not mandate that sponsors use a particular form of risk retention for specific types of asset classes or specific types of transactions. Instead, sponsors should select the option achieving the best accounting, capital and cost alternative for their circumstances, which will result in the lowest cost of capital being passed on to borrowers.

RFC 15. The proposed "menu of options approach" furthers the objectives of the statute to provide securitizers with an incentive to monitor and control the underwriting quality of securitized assets and to help align incentives among originators, sponsors and investors.

RFC 20. Additional disclosure as to why the sponsor chose a particular risk retention option does not seem necessary from an investor perspective.

RFC 22. With respect to whether the methodologies proposed for calculating the required 5% exposure under each of the options are appropriate, we note that, as discussed in our introductory statements above, the various 5% options would represent a different, and in some cases much lower, percentage of the total market value of the transaction.

With respect to the proposed forms of risk retention, we note the following:

1. Vertical Risk Retention

   BlackRock believes that vertical risk retention is the proposal that is the least likely to result in conflicts between the sponsor and investors, given the sponsor's proportionate exposure across the entire transaction. We think it is a very effective means of promoting alignment of interest between sponsors and investors.

2. Horizontal Risk Retention

   While this option theoretically places the sponsor at the largest risk in the transaction, as a practical matter it in all probability allows the sponsor to retain the lowest percentage of market value of the total transaction. This option also creates the largest potential conflict of interest between the sponsor and the holders of the other classes of securities, to the extent the servicer has control over decisions that could optimize the value of this particular tranche but are not aligned with the optimized interests of the other and much larger tranches.

   In principle, BlackRock feels that a sponsor should not be prohibited from selecting the horizontal risk option and acting as servicer, but it is extremely important that servicing standards be developed that would address the inherent potential conflict of interests inherent in such a construct.

We endorse the concept of the cash reserve account as an option; however, we feel it would be beneficial to allow a mix of a cash reserve account and security retention for a sponsor to satisfy its risk retention requirements. While the principal of the retained note should be subordinate to all other tranches, it would be customary for the holder of this retained interest to receive current payments of interest if credit performance of the whole pool is above pre-identified trigger points. In some cases, interest may accrue until a targeted level of total "overcollateralization" is achieved, again according to a pre-determined formula.

BlackRock favors the horizontal holding not having a "step-down", whereby principal amortization occurs in parallel with other tranches, which is our interpretation of the Proposed Rules as presented.

3. L-Shaped Risk Retention

BlackRock is supportive of the L-shaped Risk Retention option. In principle we are not opposed to the proposed required equal proportion of holdings of classes (vertical and horizontal) under this option; however, we believe that sponsors should have greater flexibility to combine the options as they see fit to optimize the treatment of the transaction from their perspective.

4. Revolving Asset Master Trusts (Seller's Interest)

BlackRock is supportive of a 5% Seller's Interest risk retention option for revolving asset master trusts that reflects current market practices. We are concerned, however, that the Proposed Rules require a Seller's Interest to conform to certain standards that are not consistent with Seller's Interests in the current market and that would be detrimental to the interests of investors.

In response to the Request for Comment:

RFC 41(a). Retention of a 5% Seller's Interest in a revolving asset master trust should be permitted to satisfy a base risk retention requirement. We are supportive of an alternative that exposes the holder of the Seller's Interest to risk that is no less than the risk borne by the ABS investors on the asset pool.

5. Representative Sample

BlackRock recommends that the representative sample method of risk retention be removed from the Proposed Rule. We fundamentally believe that risk should be isolated and retained with respect to each transaction to ensure precision and accountability. Further, it is quite clear that compliance with such a representative sample risk retention test could be accomplished on an institution-wide basis while not holding individual business units accountable for the quality and supervision of lending and securitization activities. In spite of efforts to prescribe acceptable methods to verify the sample, characteristics of loans and "layered risks" can be difficult to identify in order to ensure similarity to securitized pools. A common occurrence in the past was for institutions to securitize riskier assets and hold lower risk assets, an asymmetry that this form of risk retention could continue to inadvertently encourage.

BlackRock believes the monitoring and surveillance aspects of this form of risk retention are particularly cumbersome and potentially unrealistic, including but not limited to the tracking and publishing of credit performance results of the loan sample and the securitized loan pool.

In response to the Request for Comment:

RFC 47. BlackRock opposes the inclusion of the representative sample alternative as a risk retention option in the Proposed Rules. We see it as fundamentally different from the other options as it is not a self-contained option specifically related to the securitization issue and structure and the particular grouping of loans securing the securitization. For larger institutions, the condition could easily be met by the organization as a whole holding the risk, which, in light of the potentially small size of the 5% requirement relative to an entire portfolio of loan holdings, would result in an individual business unit engaged in the related capital markets activities not being held accountable. The proposed nature of selection, particularly as to comparability, and the ongoing reporting requirements are untenable and in the absence of special support difficult for individual investors to monitor and interpret. Beyond the new issue process, we believe the random sample method provides a less viable methodology in the secondary market, as opposed to a structural retention in the securitization, as it is cumbersome to explain, the implications of the risk retention on the part of the sponsor is harder to understand, and the ongoing surveillance of the independent loan pool, and results thereof, are difficult to relay to an individual securities purchaser.

RFC 48. BlackRock believes that the mechanisms in the Proposed Rules are inadequate to ensure monitoring of the randomization process if such an alternative were permitted. We believe that it is problematic to develop and maintain a viable monitoring process for this particular option that would be understandable to the marketplace. In addition, as noted elsewhere in the comments, we believe that further details on surveillance, compliance and monitoring should be included across the Proposed Rules as a whole.

RFC 49. With respect to the request for comment regarding the appropriate number of assets for the designated pool, we note that requiring a loan sample of 1,000 loans inherently favors the use of this option for consumer loans having smaller balances, versus larger commercial and commercial real estate loans. Even then, the nature of the proposal unduly favors larger institutions given the required scale of a 1,000 loan sample. For instance, in the case of residential mortgage loans where the average loan balance is $350,000, a 1,000 loan sample would require a minimum portfolio holding of $350 million in order for an institution to be eligible to utilize this method. In general, BlackRock favors a level playing field to assure the broadest flow of credit.

RFC 50. The largest problem with the random sample method, in our view, is the difficulty in determining the exact characteristics within a loan, and hence from a broad sample, that loans are in fact "comparable" credits and therefore likely to exhibit similar risk and performance characteristics. We believe that this matter involves the exercise of professional judgment and hence, across the wide range of loan types contemplated by the Proposed Rules, would be difficult to codify in a meaningful, reliable and consistent manner.

6. Asset-Backed Commercial Paper Conduits

The Proposed Rules include a specific exemption from the general risk retention requirements for eligible asset-backed commercial paper ("ABCP") conduits. The commentary to the Proposed Rules states that this option is designed to take account of the special structures through which ABCP is issued as well as the manner in which exposure to the underlying credit risk is typically retained. However, the requirements in the Proposed Rules for an eligible ABCP conduit are overly restrictive and are not consistent with the structure of existing commercial paper conduits or the structure of originator-sellers who sell ABS interests to conduits.

In response to the Request for Comment:

RFC 59. BlackRock believes that it would be appropriate to provide a risk retention exemption for ABCP conduits which are collateralized by "15G-compliant ABS" (ABS issued in a securitization transaction for which credit risk was retained as required under the risk retention rules or which was exempt from the credit risk retention requirements in accordance with the rule), where the issuing entity is bankruptcy remote and one or more regulated liquidity providers have entered into a legally binding commitment to provide 100 percent liquidity coverage to all ABCP issued by the issuing entity. We further note that in typical transaction structures, bank sponsors of multi-seller ABCP conduits may provide additional credit enhancement by issuing an irrevocable, unconditional letter of credit ("LOC") to the ABCP conduit. As a result, the bank sponsor of the conduit is in place to absorb losses up to the limit of the LOC. We believe that this LOC structure effectively provides for additional risk retention by the bank sponsor, and that an irrevocable, unconditional LOC should be one mechanism for providing qualified risk retention under the Proposed Rules.

RFC 60(a)-(b). The Proposed Rules' definition of eligible ABCP conduit is overly narrow; existing multi-seller conduits would not be eligible. With respect to whether the description of ABCP structures in the Proposed Rules is accurate, we note that under the Proposed Rules an originator-seller that sells assets to a commercial paper conduit is required to retain an eligible horizontal residual interest and sell any remaining interest in the assets it securitizes to one or more ABCP conduits. This is inconsistent with typical transaction structures where, for instance, a credit card master trust may sell senior notes to a conduit and at the same time sell mezzanine notes to other investors. Also, in some cases an ABCP conduit purchases an interest in a class of securities or provides financing to an originator while other investors who are not ABCP conduits purchase securities of the same class or provide loans of equal priority. Limiting the ownership of the remaining interest solely to ABCP conduits would similarly prohibit a master trust from availing itself of this exemption if it had other tranches or series of notes outstanding that were held by investors that were not ABCP conduits. Requiring an originator-seller that sells assets to a commercial paper conduit to sell all interests (other than the retained eligible horizontal residual interest) to ABCP conduits will needlessly reduce liquidity in the market. BlackRock therefore recommends that the ABCP conduit exemption be broadened to allow for the sale of interests to other entities as well as to ABCP conduits.

RFC 61. We believe it is not necessary for the Proposed Rules to mandate financial disclosure requirements regarding the liquidity provider for securitizations structured using ABCP conduits. Market participants and investors currently have access to financial information regarding liquidity providers.

RFC 65 – 66. The Proposed Rules would require disclosure to investors of the names of the originator-sellers to an eligible ABCP conduit. We are significant investors in the ABCP conduit market, and while we are strongly in favor of transparency and market information, we believe that in this instance, the proposed disclosure requirement is unnecessary due to the market structure for these securitizations, including their typical credit enhancements. In particular, we note that program sponsors view the names of originator-sellers as a highly confidential and proprietary client list. Other information regarding originator-sellers is already provided to investors without identifying them by name. Providing the names of originator-sellers, particularly for multi-seller ABCP conduits, could significantly shrink this critical funding market. As an alternative, the program sponsor could provide the names of originator-sellers or make them available to their primary regulator on a confidential basis.

7. Commercial Mortgage-Backed Securities

BlackRock supports the retention of the first-loss position by a third-party purchaser with respect to securitizations of commercial mortgages. We believe that the B-Piece buyers provide a strong check and balance to the originate-for-sale model utilized by the CMBS market. The originate-for-sale model was critical in attracting capital to the origination of commercial real estate ("CRE") loans across the credit spectrum and the ability to recycle that capital into that specific market niche; the incentives of the model were mitigated more effectively aligned in the CMBS market due to the presence of B-Piece buyers. The B-Piece buyer had the ability to reject CRE loans or demand the restructure of loans prior to going into the securitization transaction, thus providing loan-by-loan independent view of the portfolio prior to securitization. This is the same level of investor protection the Agencies are attempting to reinstate with the Proposed Rules. The Agencies are correct in restricting the transfer to two methods: (1) sponsor retention of 5% of the first loss position in the capital structure of a deal; or (2) the restrictive sale(s) of the B-Piece to a set of qualified buyers that would not be able to utilize non-recourse financing.

In response to the Request for Comment:

RFC 68(a). For reasons mentioned above, BlackRock agrees that a third party purchaser should be allowed to purchase the B-Piece. However, BlackRock believes that such B-Piece buyer should be a 'qualified B-Piece buyer' based on certain predetermined criteria of experience, financial analysis capability, capability to direct the special servicer and certain financial capabilities to sustain some losses.

RFC 70. The use of a third-party purchaser option should be conditioned, as proposed, on a requirement that the third-party purchaser separately examine the assets in the pool and have a limited ability to sell or hedge the interest it is required to retain. In terms of a sale of the retained interest, a B-Piece buyer should be freely able to sell its interest to a 'qualified transferee' at any time. A qualified transferee would have the same qualifications as the B-Piece buyer so this entity would be qualified to conduct its own due diligence and have the capability to direct the special servicer.

RFC 71(a). BlackRock does not believe that use of a third-party purchaser option should be conditioned on a requirement that the purchase price paid by the third-party be disclosed if all other required disclosures are provided. (b) The purchase price is non-public economic information. Further, disclosure of the purchase price does not further the objectives of the inclusion of this option, which are to allow other investors to avail themselves of the diligence conducted by the B-Piece buyer and disclosure of the risks discovered in the individual loans.

RFC 72. Certain disclosure concerning the financial resources of the B-Piece purchaser should be required. As described earlier, BlackRock believes that B-Piece financing should be limited to recourse financings thus requiring the B-Piece buyer to retain sufficient risk and not entirely offload this risk with 100% non-recourse financing.

RFC 73(a). The rule should specify particular information about a third-party purchaser that should be disclosed rather than requiring disclosure of any other information of the third-party purchaser that is material to investors, as this latter requirement is vague. BlackRock recommends that the final rule require disclosure of the following additional information: (i) the name and form of organization of the third-party purchaser, (ii) a description of the third-party purchaser's experience in investing in CMBS, (iii) the amount of the eligible horizontal residual interest that the third-party purchaser will retain (or has retained) in the transaction (expressed as a percentage of ABS interests in the issuing entity and as a dollar amount), (iv) the material terms of such interest, (v) the amount of the interest that the sponsor would have been required to retain if the sponsor had retained an interest in the transaction pursuant to the horizontal menu option and (vi) the material assumptions and methodology used in determining the aggregate amount of ABS interests of the issuing entity.

RFC 74. BlackRock suggests the following modifications to the Operating Advisor ("OA") framework:

- ensure that an OA will be present in every CMBS transaction;
- modify the structure of the OA framework so that the OA's authority to oversee the special servicer's performance and to remove the servicer depends on whether the B-piece is the controlling investor class, rather than on whether the servicer is affiliated with the B-piece buyer;
- clarify the vague "consultation" authority that is accorded to the OA in the Proposed Rules so that the OA would play an oversight role under the appropriate circumstances. This could be accomplished by requiring the OA to oversee the special servicer and make sure that the servicer satisfies the servicing standards (including information dissemination provisions) set forth in the pooling and servicing agreement ("PSA") governing the transaction when (1) the B-piece buyer is not the controlling investor class, or (2) the B-piece buyer is the controlling investor class and any investor has submitted a complaint about the special servicer's performance;

- qualify the authority provided to the OA to remove a special servicer for failure to comply with the special servicer's obligations under the PSA, by also requiring a minimum affirmative investor vote in circumstances where the B-piece buyer is the controlling investor class;

- adjust the criteria for OA independence to address the fact that a limited number of institutions will be qualified to serve as OAs for CMBS transactions, but include disclosure requirements and internal controls to address potential conflicts-of-interest to the extent they arise in the market; and

- include a requirement that the OA is informed of all defaults, workouts and any major decisions taken by the special servicer, even during the period when the B-piece buyer is the controlling shareholder.

RFC 75(a). BlackRock believes that additional disclosure relating to representations and warranties concerning the assets for CMBS should be required. In particular, a standardized format of disclosure of representations and warranties should be employed. For example, the CRE Finance Council, comprised of a wide range of industry leading participants, has developed "Model Representations and Warranties" that represent their members' views. While not all market participants may subscribe to this standard form, BlackRock feels it is critical to disclose representation and warranties in a manner that allows easy and straightforward evaluation and comparison between transactions. In addition, loan-by-loan exceptions to the representations and warranties should also be disclosed to all prospective bond investors.

RFC 76(a). BlackRock believes that it is unnecessary to require that investors be provided with a blackline of the representations and warranties for the securitization transaction against an industry-accepted standard so long as the representations and warranties themselves are disclosed. However, the rule should require that all exceptions to the representations and warranties for the securitization transaction be provided to investors in the preliminary offering documents and as an exhibit to the pooling and servicing agreement and be filed with Edgar in the case of public offerings.

8. Treatment of Government-Sponsored Enterprises

BlackRock supports the proposed treatment of the GSEs in the Proposed Rules. In the case of Fannie Mae and Freddie Mac, the presumed limited life of their respective conservatorships and the oversight of FHFA provides a bright-line, sunset provision to revisit the proposed exemptions relating to risk retention when their circumstances evolve in the future. We believe the fact that the GSEs all provide full guarantee of timely principal and interest on their securitizations more than fulfills the letter and spirit of the Proposed Rules and hence qualifies them for this exemption.

In response to the Request for Comments:

RFC 79. BlackRock believes the proposed treatment of the GSEs in the Proposed Rules is appropriate.

RFC 80. BlackRock believes that the relief granted to the GSEs permitting hedging of retained credit risk is appropriate, since the GSEs are guaranteeing 100% of the exposure that has been transferred to the marketplace in their securitizations. By comparison, other sponsors under the Proposed Rules are required to retain only 5% of the risk relating to securitizations and the hedging of that risk retention would neutralize the impact of the "skin in the game" of such retention.

RFC 81(a). With respect to whether the credit hedging of the GSE exposure should be limited to 95% of securitized interests (thereby ensuring that a minimum of 5% of issues exposure is retained), BlackRock believes that this is a moot point. It is unfeasible for those entities to enter into credit hedges in an amount anywhere near that magnitude of exposure by virtue of the volume of their lending and securitization activities.

9. Premium Capture Cash Reserve Account

In principle, BlackRock opposes the concept of the premium capture cash reserve account ("PCCRA") as set forth in the Proposed Rules. While we understand the intent of the provisions, we believe the risk retention requirements of 5% are sufficient as incremental changes to the securitization process to promote alignment of interest between issuer and investors without this additional requirement.

First and foremost, the determination as to whether an issuer has a "gain" upon securitization as determined on a cash proceeds basis is quite distinct from an accounting gain, the actual measure of profitability of a securitization transaction. The accounting gain or loss on a securitization is determined by under generally accepted accounting principles ("GAAP"), involving consideration of the characteristics of all retained risk and accrual and amortization concepts. As a result, we feel the cash-based concept of proceeds in the proposed PCCRA requirement is too simplistic to be meaningful and not aligned with the effective accounting treatment of securitizations. Second, any excess proceeds from securitization over the par value of the loans is driven by a variety of factors such as the coupon of the loans relative to the issued securities; the shape of the yield curve; and the ratings on the individual bond tranches, in addition to other factors. The combination of all these factors and the issuer's ability to monetize the value of loans drives the value of securitization and hence the pass-through of lower financing costs to borrowers. Finally, lower credit borrowers must pay a higher coupon on loans to offset future potential credit losses. As a securitization is fundamentally a sale of assets, the issuers must have the means of transferring the value of the coupon upon issuance as an incentive to make higher risk loans (as opposed to retaining such risk on a subordinate basis and independent of the other securitization tranches).

Fundamentally, most issuers of securitizations function as lenders with the securitization ultimately providing funding for lending. Any such operation has inherent costs, comprised of both cash flow and expense components for financial reporting purposes. Securitization is a financing activity, and any inherent accounting gain or receipt of cash flow in excess of par value, is just one dimension of the whole business model. BlackRock believes that the amounts to be deposited into the PCCRA may deprive sponsors of the opportunity to recover legitimate origination and other costs and therefore deter lending.

Premiums as measured by excess cash flow generated at the point of securitization may result from a change in interest rates or spreads since origination. If interest rates fall relative to loan coupon or credit spreads tighten the consequence would be to generate a premium of cash proceeds upon securitization. However, as most lenders hedge interest rate and credit spreads on loan inventory pending securitization, this gain in cash would be offset by a corresponding shortfall derived from losses in hedge positions. In addition, requiring sponsors to deposit such cash premiums into the PCCRA would result in asymmetrical treatment for the sponsor.

In response to the Request for Comment:

RFC 82; 83; 84; 85 (a),(b). For the reasons outlined directly above, BlackRock recommends withdrawal of the PCCRA provisions as set forth in the Proposed Rules.

C. Allocation to the Originator

BlackRock supports the rights afforded in the Proposed Rule that allow the sponsor to allocate at least a portion of the credit risk it is required to retain to originators of the securitized assets. This feature, in our view, promotes soundness and accountability since the originator has the closest connection to and best knowledge of the borrower on the loan obligations. Further, it promotes the viability of sponsored securitization conduits, which afford loan originators of all sizes access to the market and the advantages of participating in larger, pooled securitizations.

In response to the Request for Comments:

RFC 86(a). BlackRock believes that sponsors should be able to allocate risk retention to originators under the vertical and horizontal options, as proposed, as well as under the L-shaped risk retention option. (b) While we cannot specifically predict when different risk transfer alternatives would be used, as most originators are regulated financial institutions, it is desirable to afford originators the same range of options as securitized sponsors in the Proposed Rules, for capital, accounting and other considerations. (c) The benefits of providing this flexibility to originators outweigh concerns regarding complexity. As monitoring activities must necessarily track ongoing holdings of risk retention assets, BlackRock does not see a distinction between the complexity of monitoring vertical, horizontal and L-shaped holdings.

RFC 87. BlackRock believes that sponsors electing the horizontal cash reserve account option should also be permitted to allocate risk retention to originators, for the same reasons as set forth in the response to 86(b) above.

RFC 88(a). In order to promote broad and equal access to the market by participants of all sizes, BlackRock firmly believes that the allocation of risk retention to an originator should not have to meet a 20% minimum threshold, but instead should be allowed proportionate to any originator contribution (perhaps subject to some administrative minimum threshold, such as 0.5% of total assets). Many pooled securitizations are very large, such that in the case of a $4 billion offering, for instance, a 0.5% contributor would provide $20 million of collateral. We see no reason, given the significant amount that contribution represents on an absolute basis, that any such originator should be afforded different options than larger market participants. This feature is critical to the fair and equal treatment of all market participants, regardless of size, and would, in our view, better promote the flow of credit.

RFC 90. As noted elsewhere, BlackRock believes that risk retention (as defined in the Proposed Rules) over the life of the transaction without any form of exception or relief is unduly restrictive. It is appropriate, in our view, to consider allowing sponsors to transfer risk to third parties, subject to some set of pre-determined conditions that could include: (i) minimum qualifications of the third party transferee (a "qualified transferee") if transferred in the first three years since issuance; (ii) minimum amount of time since issuance (e.g., three years) if the transferee is not a qualified transferee; (iii) achievement of specified cumulative credit performance of the assets in the securitized pool; and/or (iv) maintenance of ratings to some pre-determined, minimum standard (relative to ratings at issuance).

RFC 91; 92(a), (b); 93(a); 94(a); 95. The proposed disclosures included in the Proposed Rules are insufficient to provide investors with all material information regarding the securitization. Additional disclosures should be required. As noted elsewhere in our comments, sponsor compliance; transparency to investors; surveillance and reporting; notice of breach; and cure for breach generally require better definition across the Proposed Rules. This is equally true regarding the provisions addressing risk transfer to originators. With respect to whether a sponsor should be required to obtain a contractual commitment from the originator to retain the interest in accordance with the rule, we agree that commercially reasonable and enforceable contractual means should govern the relationships between sponsor and originators, with continual transparency and clarity of breach and consequences thereof. Sponsors should be reasonably accountable for the actions of originators, under these provisions, subject to the reasonable constraints of applicable contract law.

D. Hedging, Transfer and Financing Restrictions

For commercial mortgages, the Dodd-Frank Act essentially allows the sponsor to transfer the retained interest to a "qualified transferee" in the form of the B-piece buyer, who meets all of the qualifications outlined in the statute (e.g., retaining a first-loss position, conducting the requisite diligence, etc.). As the Dodd-Frank Act allows a CMBS sponsor to transfer the retained interest to a B-piece buyer, BlackRock suggests that a B-piece buyer be permitted to transfer the retained interest to a "qualified transferee." To create proper alignment of interests, the "qualified transferee" should be required to meet the same criteria as are set forth in the final rule for B-piece buyer retention, or the requirements for a Qualified Institutional Buyer in SEC Rule 144A or for an Institutional Accredited Investor. The "qualified transferee" concept would satisfy policy goals of facilitating appropriate alignment of risk, encouraging sound underwriting and providing liquidity for transferors.

RFC 96(a). The permitted transfer of a retained interest to consolidated affiliates is appropriate. Further, transfers should also be permitted to other qualified entities. The inability to transfer or sell the credit interest in a CMBS transaction is particularly problematic for B-piece buyers. Investors of all types, including B-piece buyers, will not want, and in some cases are barred from accepting, a permanent inability to transfer an investment. In addition, no fiduciary of capital for others would ever agree to invest in a security that could not be sold. If the B-piece buyer cannot transfer its interest, there will be few, if any, B-piece buyers able to bid for the bottom of the CMBS capital stack and capital will be substantially curtailed in the credit portion of the CMBS market. The lack of capital will increase borrowing costs and will also frustrate the direction in the Dodd-Frank Act to utilize the B-piece buyer as a risk retention modality.

RFC 102(a). A CMBS sponsor should be permitted to transfer or hedge its retained exposure to a qualified transferee at any time. In reference to commercial real estate, a permanent risk retention obligation will create balance sheet capacity constraints. Eventually a sponsor's holding of retained interests (without the ability to transfer) will result in that sponsor having no more capacity to lend, without regard to other market conditions. A sponsor that becomes capacity-constrained may hold back on new issuances, further constraining the market. A permanent retention obligation would be particularly problematic for B-piece buyers who cannot surrender the right to sell an investment.

RFC 102(b). As noted above, with the exception of transfers to a qualified transferee, BlackRock recommends a retention period of three years for CMBS and RMBS transactions. For other asset classes, we would suggest that a reasonable retention period be set in relation to the life of the asset. After the retention period, transfers should not be limited to qualified transferees.

RFC 105. In reference to commercial real estate, credit protection on the sponsor's credit exposure should be prohibited as it would limit the sponsor's "skin-in-the game" with respect to the securitized assets.

IV. Qualified Residential Mortgages

A. Overall Approach to Defining Qualifying Residential Mortgages

Our view on the overall approach for defining QRMs is covered below.

B. Exemption for QRMs

BlackRock endorses the effort to establish a QRM standard. However, we believe that the proposed criteria are too restrictive and are not generally achievable except for a small percentage of new mortgage originations. As noted below, BlackRock proposes a series of recommended changes to the eligibility criteria which, in our view, should accommodate 40 to 60% of mortgage loan origination which we believe is a reasonable objective to encourage responsible lending behavior.

We also believe that the QRM eligibility, while determined on an individual loan basis, should be established by a matrix of credit values whereby a conservative underwriting factor offsets an aggressive underwriting factor, up to an agreed-upon a limit. The main variables for residential mortgage loans would be loan-to-value ratio; ability to repay and borrower's credit history.

Below we provide some discussion of the average and limit values that should be within the matrix for the various underwriting factors that we believe should comprise the matrix.

C. Eligibility Criteria

1. Eligible Loans, First Lien, No Subordinate Liens, Original Maturity and Written Application Requirements

BlackRock supports the proposed loan and property definitions for qualification as a QRM including:

- Closed-end, first lien loan;
- One to four family unit (owner-occupied);
- Prohibition on construction and bridge loans; and
- Inclusiveness of condominium and cooperative units as well as manufactured housing.

BlackRock understands the technical reasons for not including reverse mortgages; however, we believe properly designed, transparently structured and appropriately underwritten reverse mortgages are an important mortgage product for suitable borrowers and should be QRM-eligible.

BlackRock wholeheartedly endorses the prohibition on second lien financing for purchase money mortgages. We believe the existence of secondary financing, and the implicit total leverage caused thereby, significantly contributed to the increase in default rates and loss severities as a consequence of the credit bubble. The availability of "easy money" with limited down payments also served to create a bubble in house price appreciation by decreasing the significance of any "skin in the game" from the borrower and by removing rational consideration of purchase price and relative value.

BlackRock believes that second lien financing should also be disallowed for QRM-eligible refinancing transactions. As proposed, the criteria for allowing existing second liens to remain in effect has no combined loan-to-value limit, which is not in keeping with the strict risk profile otherwise advocated within the QRM guidelines. In light of this recommendation, and the position of the Proposed Rules with respect to second liens being prohibited for purchase money mortgages, BlackRock recommends second lien financing be disallowed during the full term of a QRM, absent first mortgage holder consent. The guidelines for such consent could be established in an asset-backed securitization and be governed by combined loan-to-value ratio at the time the second lien is to be incurred.

BlackRock believes that a priority status should be established for QRM loans, prohibiting any modification or default mitigation prior to any second lien or junior lien being fully written off. We also have general concerns relating to default mitigation activities, including behavior of servicers responsible for both first and second liens, as set forth in comments under Section IV.C.10 below.

2. Borrower Credit History

BlackRock believes that the Proposed Rules have laid out a logical set of standards, proposed as "derogatory factors," as a basis of identifying qualifications as a QRM, namely:

- Borrower not currently 30 or more days past due on any debt obligation;
- Borrower has not been 60 days or more past due on any debt obligation within the last 24 months;
- Borrower has not within the preceding 36 months been a debtor in a bankruptcy proceeding, had property repossessed, engaged in a short sale or deed-in-lieu foreclosure, or been subject to a Federal or State judgment for collection of unpaid debt.

However, secondary market practice and practical procedures in loan origination are supported by the use of credit scores to measure the potential impact such derogatory factors may have on an individual's credit. While the factors described above no doubt are important, there are numerous other factors that might impact an individual credit score, positively or negatively, that should rightly be considered by the lender. These factors include years in industry and current job; prior experience in terms of credit level and historic performance; and other factors. Many individual lenders have created proprietary credit scoring models that are adapted specifically to their lending segment and focus that are highly informed by their experience.

BlackRock believes that the Proposed Rule should not simply have the rigid "derogatory factors" as the criteria for borrower credit history. If any rigid "derogatory factors" remained in the criteria at all, BlackRock would favor including the factors set forth in the third bullet point above as absolute standards; making unsafe loans to borrowers with these characteristics is an example of recent, verified "bad behavior" that should be specifically discouraged.

Detailed regulations could be established to benchmark different credit score services to specific criteria, such as the derogatory factors cited above, with some confidence of relative benchmark limits. For the most common industry provider, Fair Isaacs (or "FICO"), we believe the QRM matrix should allow no individual FICO below 680 and the average results in the matrix should center around a FICO of 700.

Credit scores have proven to be extremely accurate predictors of the probability of default. The principal issues during the credit bubble were a departure from reasonable standards of minimum acceptable credit scores as well as the introduction of "layered risk", in particular high loan-to-value ratios; presence of piggy-back seconds and loans with negative amortization and initial teaser rates. Because the factors of "layered risk" by definition cannot be present in a QRM, by virtue of the rigorousness of the proposed criteria, BlackRock favors incorporating a credit score element into the QRM eligibility matrix as discussed above to encourage ongoing sophisticated evolution of credit modeling and scoring practices within the industry.

In response to the Request for Comment:

RFC 115. We believe the proposed credit history standards are reasonable and are useful indicators of the likelihood that a borrower might default on a new residential mortgage loan. However, we believe that using a small subset of "derogatory factors" oversimplifies the process of determining a borrower's ability to repay. We feel that the use of credit scores is a more scientific method of establishing the credit characteristics of borrowers. BlackRock believes such a system to be more consistent with prudent lender practice and consumer behavior and would also encourage the ongoing evolution of scientific borrower credit behavior models (provided by multiple vendors and supported by lenders on a proprietary basis).

RFC 117(a). As discussed in our response to comment 115 above, BlackRock believes that a minimum credit score threshold should be incorporated into the QRM standard. As credit scores are a common language of evaluating borrower creditworthiness, it is important that mortgage lending not depart from standards otherwise used by consumer lenders in the credit card, automobile and home equity sectors.

(b) In the event that credit scores are incorporated into the QRM standard, credit score providers should be qualified and approved by a regulatory body and the results of historic probability of defaults based on scores; transparency of modeling changes; and other useful consumer and investor features should all be made more available publicly. An additional benefit to this approach would be that greater transparency on how credit scores are reported would be achieved and borrowers would understand better the implications of an individual credit rating. Credit scores have tremendous power and influence on consumer lending practices. BlackRock feels that their inclusion in the QRM standard and the additional structure and guidance resulting from such inclusion would contribute to both consumer and lender protection, benefiting not only mortgage lenders but other consumer credit channels as well.

RFC 118. BlackRock believes the safe harbor test in the Proposed Rules allowing an originator to satisfy the documentation and verification requirements regarding a borrower's credit history by obtaining credit reports from at least two consumer reporting agencies is reasonable in practice and would result in a transparent and verifiable chain for investors.

3. Payment Terms

BlackRock supports the proposed elements of payment terms for qualification as a QRM including:

- Disallowance of interest-only or negative amortization;
- Disallowance of Borrower option to defer payment of interest or repayment of principal;
- Prohibition of Balloon payments (as defined);
- Limitations on annual and lifetime adjustments of interest rates on adjustable rate mortgage loans; and
- Prohibition of prepayment penalties (as defined).

We believe that many of these features were important components of "layered risk" which contributed to an increase in the risk of mortgage lending and generally all align to approve marginally qualified borrowers inappropriately for mortgage credit.

The proposed limits on the adjustment of interest rates of (i) two percent (200 basis points) in any twelve month period and (ii) six percent (600 basis points) over the life of the mortgage transaction is reasonable for one-year adjustable rate mortgages and BlackRock supports those limitations. However BlackRock does not endorse the proposed limits for hybrid loans, which are mortgage loans that have a maturity of 15 or 30 years; an initial fixed rate period, typically between 3 and 10 years; and following the fixed period have (i) a one-time rate reset according to a pre-determined index and margin; and (ii) thereafter reset as one-year adjustable rate mortgage loans. Once in the one year adjustable period, the mortgage loans generally have a limit of adjustment of 200 basis points per year. The loans also generally have a lifetime limit of rate increase of 600 basis points. However, at the first reset period the interest rate can typically increase by up to 500 basis points.

We believe hybrid loans play an important role in the mortgage market, particularly accommodating borrowers that anticipate mobility or refinancing during the initial fixed rate term. The loans also have superior characteristics for banks and other depositaries in their ability to meet asset and liability management targets. As a result, we favor the expansion of the limits on interest rate adjustments for the QRM definition to encompass hybrid loans.

While there is a case to be made to create an exception for interest-only mortgages, in the case of highly-qualified borrowers, the linkage of these features (payment terms and borrower ability to pay) is beyond the proposed scope and function of the Proposed Rules.

In response to the Request for Comment:

RFC 119. (a) BlackRock generally supports the Proposed Rules' limits on payment terms of a QRM as proposed. As noted above, BlackRock recommends expanding the criteria for limits on adjustment of interest rates for QRMs to contemplate the unique product features of 3 to 10 year hybrid loans (as described more fully above).

4. Loan-to-Value Ratio

BlackRock believes the data presented by the Agencies in the narrative of the Proposed Rule relating to probability of default, as indexed by loan-to value ratios, were heavily influenced by a number of factors including: (i) lack of verification of income and assets for large segments of lending volumes; (ii) poor property appraisal practices; (iii) high incidence of secondary financing making effective loan-to-value much higher than indicated; and (iv) availability of loans with a high risk of payment shock to unqualified borrowers. None of these factors is possible within the QRM standards and hence, in our view, the loan-to-value criteria proposed is too conservative. We further believe that the aggressive practices during the credit bubble inflated housing values.

Loan-to-value ratio should be one of the variables in the credit matrix described below, with a conservative or aggressive result offsetting other factors in the matrix (borrower credit and ability to repay).

BlackRock supports the use of private mortgage insurance, by a qualified provider, that would permit a loan-to-value ratio of up to 90% if the value of the insurance reduces the effective loan-to-value ratio to 75% to 80%.

In response to the Request for Comment:

RFC 120. BlackRock proposes the following loan-to-value limits with respect to QRM eligibility in the Proposed Rules, in the context of the proposed matrix:

- 85% for purchase money transactions;
- 80% (combined loan-to-value) for rate and term refinances; and
- 80% (combined loan-to-value) for cash-out refinances.

We believe the matrix should center on a loan-to-value ratio of 80% for purchase money transactions and of 75% for rate and term refinances and cash-out refinances.

5. Down Payment

In response to the Request for Comment:

RFC 121. BlackRock is supportive of the proposed requirements pertaining to the form and nature of down payments for eligible QRMs as set forth in the

Proposed Rules, subject to adjustment if more liberal loan-to-value limits are instituted as we have suggested above.

6. Qualifying Appraisal

BlackRock is supportive of the proposed requirements for a qualifying appraisal for QRM eligibility as set forth in the Proposed Rules.

In response to the Request for Comment:

RFC 122. In determining the value of the real property pledged on the mortgage transaction, BlackRock suggests that at least two appraisals be required for loans with an original principal balance in excess of $500,000 and three appraisals be required for loans of over $1 million when the values derived by the first two appraisals differ by more than 5%.

7. Ability to Repay

BlackRock wholeheartedly endorses the criteria in the Proposed Rules which specify both the method and the verification for underwriting ability to repay by the borrower. In our view, the identification of limits on front-end and back-end ratios are the correct parameters for focus.

We believe the absolute limit of a front-end and back-end ratio of 28% and 36%, however, are too conservative, particularly in light of the other credit parameters of the QRM eligibility guidelines. We also believe that other factors, such as the absolute level of borrower earnings as well as the assets of the borrowers, should influence professional judgment in assessing an appropriate front-end and back-end ratio limit. These limits should be components of the eligibility matrix described below and we believe that higher ratios should be allowed at the limits for QRM standards.

In response to the Request for Comment:

RFC 123. BlackRock supports the proposed income methodology and verification requirements set forth in the Proposed Rules. We also agree that the front-end and back-end ratios are the most appropriate means of measuring the borrower's ability to repay.

We believe the criteria should include both an average and a maximum front-end and back-end ratio for a QRM securitized pool, with suggested criteria being:

- Maximum front-end and back-end ratio not to exceed 34 and 42 percent respectively for a QRM; and

- The matrix would center at 30% with respect to the required front-end ratio for a QRM and 38% with respect to the required back-end ratio for a QRM.

8. Points and Fees

BlackRock believes that the criteria for points and fees set forth in the Proposed Rule are unnecessary with respect to QRM qualification and should be eliminated as stated criteria. Robust regulation, including consumer reporting and protection, already exists and it is a confusing criteria when considered relative to mortgage credit standards.

As a point of fact, a legitimate "buy-down" of interest rates via the payment of points in fact increases credit-worthiness and properly monitored and regulated is a sound practice.

In response to the Request for Comment:

RFC 124(a) BlackRock recommends removing points and fees from the QRM definition; they are not a pure credit standard on par with other criteria, so their inclusion is confusing. A properly constructed "buy-down" of interest rate on a loan actually increases creditworthiness. We believe that consumer protections relating to points and fees should be included in TILA and other appropriate regulations.

9. Assumability Prohibition

BlackRock supports the proposed prohibition on assumability of a QRM as a standard, for the reasons outlined in the Proposed Rules.

10. Default Mitigation

BlackRock completely supports the ongoing interagency effort that is focused on developing national mortgage servicing standards that would apply to servicers of residential mortgages, including bank-affiliated servicers and servicers that are not affiliated with banks. We note that in recent years there have been significant issues with the processing of mortgage loans. In particular, the high levels of mortgage loan delinquencies and low staffing levels of servicers have resulted in poor servicing of loans at risk for and in default which has negatively impacted investors in mortgage-backed securities. BlackRock believes requiring servicers to follow a specific set of policies and procedures, and assuring there is adequate and fair compensation for such services, will help address this issue.

We believe strongly that such rules should apply uniformly to all residential mortgage loans, not just QRM-eligible loans, to promote soundness in the credit markets and fair and consistent treatment of borrowers and to protect investor's interests. Any such servicing standards, particularly with respect to default mitigation provisions, should be comprehensive in scope (much more so than the elements addressed in the Proposed Rules). We are wary of the proposed default mitigation aspects of the QRM Proposed Rules in that they only address certain issues that should be covered in the national mortgage servicing standards and by their existence raise the possibility that QRM default mitigation standards may ultimately vary from national standards in some respects.

A securitization's governing documents, particularly the pooling and servicing agreement, limit the range and nature of eligible loan modification techniques that a servicer can pursue. In order to achieve a securitization outcome for QRM loans under these provisions, both capital market standards and other elements, such as rating agency criteria, would need to conform to the proposed rules. In addition, REMIC tax regulations further limit the nature and circumstances of loan modifications. Conformity of REMIC tax regulations, to address any conflict with any proposed default mitigation regimen, is critical in order to preserve the ability to securitize loans having these features.

BlackRock is particularly concerned about conflicts of interest arising from a sponsor or its affiliate acting as a servicer in a securitization while also holding a junior lien on the same property. We note that the servicing polices and procedures described in the Proposed Rules would require servicers to take loss mitigation actions, such as engaging in loan modification, under certain circumstances. While we are supportive of these efforts, as noted above, we strongly oppose any provision that would encourage a modification of a first-lien mortgage loan prior to the write-off of second lien loans and a borrower's unsecured loans. The mere existence of the potential conflict of a servicer we think is significant and should be disclosed and somehow monitored with respect to all mortgage securitizations, whether of QRM loans or other mortgage loans.

In response to the Request for Comment:

RFC 125. With respect to whether the definition of QRM should include servicing requirements, BlackRock is generally supportive of the suggestions relating to default mitigation set forth in the Proposed Rules. However, we consider them to be generally incomplete and we are wary of reduced or simplified standards for QRM-eligible loans. We think that national servicing standards, including default mitigation provisions, should uniformly cover all mortgage loans.

RFC 126(a). As noted above, while BlackRock agrees in general with the proposed servicing requirements, they are not sufficiently robust and do not fully cover all requirements that should be in place nationally to protect investors' interests. (b) An alternative approach to including servicing requirements in the QRM definition would be to rely instead on the broader national standards that are to be proposed and adopted in the near future, as noted in the Proposed Rules.

RFC 127(a). Servicers should be required to have policies and procedures that provide for loss mitigation activities if the borrower is 90 days delinquent but default has not occurred under the mortgage loan transaction documents. However, a servicer should have the flexibility to exercise professional judgment in the timing of modification following review of the facts and circumstances in order to avoid unintended moral hazard of inappropriate borrowers seeking modification that is not necessary given their financial circumstances. (b) Similarly, these policies and procedures should require initiation of loss mitigation activities when default is reasonably foreseeable, subject to flexibility to exercise professional judgment.

RFC 128 (a) and (b). Servicers should be required to have policies and procedures that provide for loss mitigation actions for QRMs when the estimated net present value of the action would exceed the estimated net present value of recovery through foreclosure. These policies and procedures should require the servicer to take specific actions to mitigate losses. However, as noted above, a servicer should have the flexibility to exercise professional judgment in the timing of modification. (c) As noted above, the main implication of requiring the inclusion of such standards is that the governing documents for a securitization transaction would be required to be modified to contemplate the range of options. The need for other actions, such as approval by rating agencies, must also be addressed. Further, adjustments to REMIC tax regulations may be required to allow loans with such features to be securitized and maintain REMIC treatment.

RFC 137 (a) BlackRock believes the advancing of principal and interest payments is critical to the functioning of the mortgage-backed securities market. As such advances are to be made unless deemed unrecoverable, in most cases investors should expect advances to be made in all cases with respect to delinquent loans. Except in extreme market circumstances, such advances should not introduce an undue burden on mortgage servicers given what typically should be a low level of delinquent loans over the life of a mortgage pool. This would be particularly true of a QRM pool, as defined in the Proposed Rules, given the conservative construct of the definition; as such, delinquent loans and the obligation to advance should not result in servicers prematurely engaging in foreclose or default mitigation actions. (b) BlackRock believes no regulation is required relative to servicer advancing obligations in securitization documents. The requirement to advance should be commercially addressed in securitization documents (which have been clarified and enhanced since the consequences and implications of the housing and credit crisis have been observed by market participants).

RFC 138 and 140. BlackRock believes that a national servicing standard should be adopted and that it should uniformly apply to all residential mortgage loans, not just QRM-eligible loans. In light of the expectation and requirement that regulations regarding such national servicing standard will be adopted in the near future, BlackRock suggests that the servicing standards and default mitigation elements with respect to QRM be removed from the Proposed Rules, especially as the procedures described in the Proposed Rules are not sufficiently robust to cover all circumstances and could conflict, in some respect, with final national standards when adopted.

D. Repurchase of Loans Subsequently Determined to Be Non-Qualified after Closing

BlackRock endorses the proposed effort to provide sponsor certification of controls and thoughtful requirements to repurchase loans to protect the integrity of the transaction and investor interests.

V. Reduced Risk Retention Requirements for ABS Backed by Qualifying Commercial Real Estate Loans or Automobile Loans

A. Asset Classes

BlackRock has no comments on this Section of the Proposed Rules.

B. ABS Collateralized Exclusively by Qualifying CRE Loans, Commercial Loans, or Automobile Loans

BlackRock has no comments on this Section of the Proposed Rules.

C. Qualifying Commercial Loans

BlackRock's comments on this Section of the Proposed Rules are noted below.

1. Ability to Repay

BlackRock has no comments on this Section of the Proposed Rules.

2. Risk Management and Monitoring Requirements

In response to the Request for Comment:

RFC 154. BlackRock believes that the criteria for eligibility for commercial loans should be more lenient. In particular, we would recommend that permitted loan obligations include both first lien and second lien obligations, so long as the same credit criteria are achieved.

D. Qualifying CRE Loans

Similar to our position on QRM standards, BlackRock believes that the underwriting standards for qualifying CRE loans should be developed on a matrix basis, where conservative underwriting factors can offset any aggressive underwriting factors, with the matrix overall centered on an average, expected underwriting criteria for each factor.

The exemption criteria in the Proposed Rules, when taken together, are so narrow that even if only three of the core criteria are applied (loan-to-value ratio of not more than 65%, debt service coverage ratio of not less than 1.7x and a straight-line amortization period of not more than 20 years), it is estimated that less than 0.4% (or $2.9 billion) of the $671 billion in CRE loans that have been securitized since the beginning of the CMBS market would qualify for exemption. As stated above, BlackRock would like to see a standard developed whereby up to 50% of newly originated CRE mortgage loans could be eligible for exemption for credit risk retention through adoption of conservative yet achievable criteria.

BlackRock concurs with the requirement that a lender perform a two-year look-back at the borrower's financial stability and an analysis of their payment history on their other debts. This is a reasonable and prudent requirement and is already a part of most lenders' current underwriting practices. Forward-looking analysis post-closing may be possible if borrowers are required by statute to provide rent rolls (office, retail, industrial) and consistent financial statements for all properties.

Additional recommendations to the standards that BlackRock proposes include:

- More liberal eligibility for floating rate loans;
- Minimum allowable amortization of 30 years;
- Fewer constraints on minimum loan maturity, as BlackRock believes that factor in isolation is not a driver of additional credit risk;
- Possible consideration of secondary financing, if combined loan-to-value ratios (and other credit criteria on a combined basis) conform to the eligibility standards); and
- Allowance for interest-only payment periods, possibly for loans with conservative loan-to-value ratios (e.g., 70% or less).

1. Ability to Repay

BlackRock believes that the required debt service guidelines of 1.7 or greater, with allowance down to 1.5 for stabilized properties, are too conservative, and should be adjusted as follows:

- Debt service coverage ratio of greater than 1.35; and

- Debt service coverage ratio for stabilized properties of greater than 1.20.

2. Loan-to-Value Requirement

BlackRock believes the proposed loan-to-value limit of 65% is too conservative, and should be set by asset class; we suggest the following levels:

- Multifamily: not greater than 80%
- Office: not greater than 75%
- Industrial: not greater than 70%
- Retail: not greater than 70%
- Hotel and other hospitality: not greater than 65%

3. Valuation of Collateral

BlackRock believes the restrictions and procedures relating to valuation of collateral are too granular in nature to be generally applied across all CRE lending and should be withdrawn from the CRE loan eligibility criteria.

4. Risk Management and Monitoring Requirements

The proposal requires sponsors to "monitor a third-party purchaser's compliance" with the risk retention rule's requirements for third-party retention, and notify the bondholders of any non-compliance. This standard is not practical, as sponsors do not have access to all the information needed to perform such monitoring and some other monitoring or reporting method should be considered.

BlackRock supports a protocol whereby a buyer of a horizontal residual interest certifies annually that it is in compliance with the requirements for third-party retention under the Proposed Rules. This certification could be made by the holder to an Operating Advisor, and the Operating Advisor could be given the authority to enforce the compliance obligation, in addition to the other duties suggested above for the Operating Advisor.

E. Qualifying Automobile Loans

BlackRock endorses the effort to establish a qualifying automobile loan ("QAL") standard. However, we believe that the proposed criteria are too restrictive and are not consistent with current automobile loan origination practices. Most auto loans currently being originated would not qualify under the Proposed Rules. Fundamentally, automobile loans are different from mortgages. The availability of financing is crucial to automobile sales, and for people's ability to commute to work. While a family can rent instead of buying a single family house, it is prohibitively expensive to commute to work or to participate in other day-to-day activities with a rental car. BlackRock recommends changes to the eligibility criteria which in our view should accommodate a substantial portion, at least a majority, of auto loan originations under the current market levels, which we believe is a reasonable objective to encourage responsible lending behavior.

We also believe that the QAL eligibility, while determined on an individual loan basis, should be established by a matrix of credit values whereby a conservative underwriting factor offsets an aggressive factor up to an agreed-upon limit. The main variables for automobile loans would be loan-to-value ratio, ability to pay and a borrower's credit history.

Below we provide a discussion on the average and limit values for the various underwriting factors that we believe should comprise the matrix.

1. Ability to Repay

BlackRock believes that the required maximum debt-to-income ratio for a borrower under a qualifying auto loan should be higher than the 36% set forth in the Proposed Rules. Very few auto loans will qualify for the exemption if this ratio remains at its current level. In much of the country auto transportation is the only way for people to commute to work. Therefore, it is desirable to have a very high debt-to-income ratio limit or to remove it altogether from the Proposed Rules.

2. Loan Terms

The requirement that a qualifying automobile loan must have a maturity of five years or less would prevent a significant number of auto loans from qualifying under the proposed definition. In the case of used car loans the Proposed Rules require that the term of the loan, plus the difference between the current model year and the vehicle's model year, not exceed five years. We note that auto loans maturities have been rising in recent years. As a result, the maturity restrictions will constrain credit availability by making the longer term loans non-qualified.

It is also important that qualifying loans should not have adverse characteristics such as balloon or delayed amortization features, payment holidays, and the presence of residual risk.

3. Reviewing Credit History

Our comments on the use of the credit history of the borrower for mortgages, including a FICO cutoff also apply here (see Section IV.C.2 above).

4. Loan-to-Value

The requirement that a borrower tender a down payment of the sum of (i) the cost of vehicle title, tax, registration fees and dealer-imposed fees and (ii) 20% of the purchase price is quite onerous and does not reflect current market practice in automobile financing. We believe that a lower down payment requirement on an otherwise conservatively underwritten automobile loan will not pose any significant additional credit risk.

In response to the Request for Comments:

RFC 159(a) BlackRock recommends a significantly lower down payment minimum of 5% for qualified automobile loans. BlackRock also recommends that the maximum maturity allowed under the qualifying automobile loan definition be increased to six years in keeping with the current origination practices.

F. Buy-back Requirements

BlackRock has no comments on this Section of the Proposed Rules.

VI. General Exemptions

A. Exemption for Federally Insured or Guaranteed Residential, Multifamily and Health Care Mortgage Loan Assets

BlackRock has no comments on this Section of the Proposed Rules.

B. Other Exemptions

RFC 166(b). BlackRock believes that the proposed exemption for ABS issued or guaranteed by a State or municipal entity is under-inclusive. While securities issued or guaranteed by a state of the United States, or any subdivision or instrumentality that is exempt from the registration requirements of the Securities Act, are exempt from the risk retention requirements under the Proposed Rules, securities that are collateralized by such securities, such as tender option bonds ("TOBs"), fall outside of the exemption.

As noted in the Proposed Rules, it is appropriate in the public interest and for the protection of investors that securities issued or guaranteed by a state or municipality be exempted from the risk retention requirements, in light of the role of the state or municipal entity in issuing, insuring or guaranteeing the ABS or collateral and the special treatment afforded such securities by Congress. Similarly, securities which are collateralized by such exempted securities should also be exempt from the risk retention requirement. Requiring the sponsors of TOBs and similar securities to retain risk would not further the goal of prudent underwriting and would impose an unnecessary burden on sponsors of such securities. BlackRock therefore recommends that the exemption relating to ABS issued or guaranteed by a state or municipal entity be broadened to include securities collateralized by such exempt securities.

C. Exemption for Certain Resecuritization Transactions

The Proposed Rules provide an exemption for resecuritization transactions (i) which are collateralized solely by "15G-compliant ABS" (which are ABS issued in a securitization transaction for which credit risk was retained as required under the rule or which was exempted from the credit risk retention requirements of the rule) and (ii) where only a single class of ABS interests is issued and the transaction structure requires the pass-through of all principal and interest payments received on the underlying ABS to the holders of this class.

BlackRock believes that other types of resecuritization transactions backed by "15G-compliant ABS" should be exempt from the risk retention requirement. In particular, the requirement that resecuritizations be exempt from risk retention only if there is a single pass-through tranche is too restrictive.

Private market resecuritization transactions usually involve the issuance of multiple classes of securities. This structure is employed in order to allocate risk between the classes of securities: the more subordinate classes of securities bear a greater risk of loss, whereas the more senior classes of securities bear a smaller risk of loss. This enables the more senior classes of securities to obtain a higher credit rating or meet other criteria desired by investors. Additionally, senior classes may be tranched based on timing of cashflows or prepayments to meet the requirements of investors. The limitation of the resecuritization exemption to a single pass-through tranche restricts investors from carving out higher rated tranches from existing securitizations in order to create securities which will meet these investor needs. It also restricts investors from choosing senior tranches with maturities or prepayment characteristics that meet their investment needs.

In response to the Request for Comment:

RFC 168(a). BlackRock believes that the resecuritization exemption should be expanded to include multi-tranche resecuritizations of 15-G compliant ABS in addition to single-tranche resecuritizations.

RFC 169(a) and (b). An exemption for a sequential-pay resecuritization that is collateralized by 15G-compliant ABS should be included in the final rules. Time tranching of cashflows is a well established practice in securitization and benefits investors by matching the maturity of the tranches to their investment needs.

RFC 170(a) and (b). An exemption for prepayment-tranched resecuritizations that are backed by 15G-compliant ABS should also be included in the final rules. It is standard practice to use prepayment based tranching of mortgage cashflows in securitizations. Such tranches are exposed only to prepayment risk and are not exposed to credit risk.

RFC 171. BlackRock agrees that only resecuritizations involving 15G-compliant ABS should qualify for the risk retention exemption, even though initially only resecuritizations based on GSE-guaranteed ABS may qualify for the exemption. However, resecuritizations of private label ABS should be exempt as well once the risk retention requirements have been met by the underlying ABS. We believe that simple and conservative resecuritizations that include credit, time and prepayment tranching of cashflows without any step-down features or performance triggers will benefit investors by providing them investment choices that meet their needs.

D. Additional exemptions

BlackRock has no comments on this Section of the Proposed Rules.

E. Safe harbor for certain foreign-related transactions

BlackRock has no comments on this Section of the Proposed Rules.

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We thank the Agencies for the opportunity to comment on these Proposed Rules. We look forward to working with the Agencies on this rulemaking process. If you have any questions or would like further information, please do not hesitate to contact me.

Sincerely,

Barbara Novick
Vice Chairman, BlackRock, Inc.