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Via E-Mail:

John G. Walsh
Acting Comptroller of the Currency
U.S. Department of the Treasury
250 E Street, SW
Washington, DC 20219
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

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

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G St NW, 4th Floor
Washington, DC 20552
RIN 2590-AA43

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

Helen R. Kanovsky
General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Docket No. FR-5504-P-01

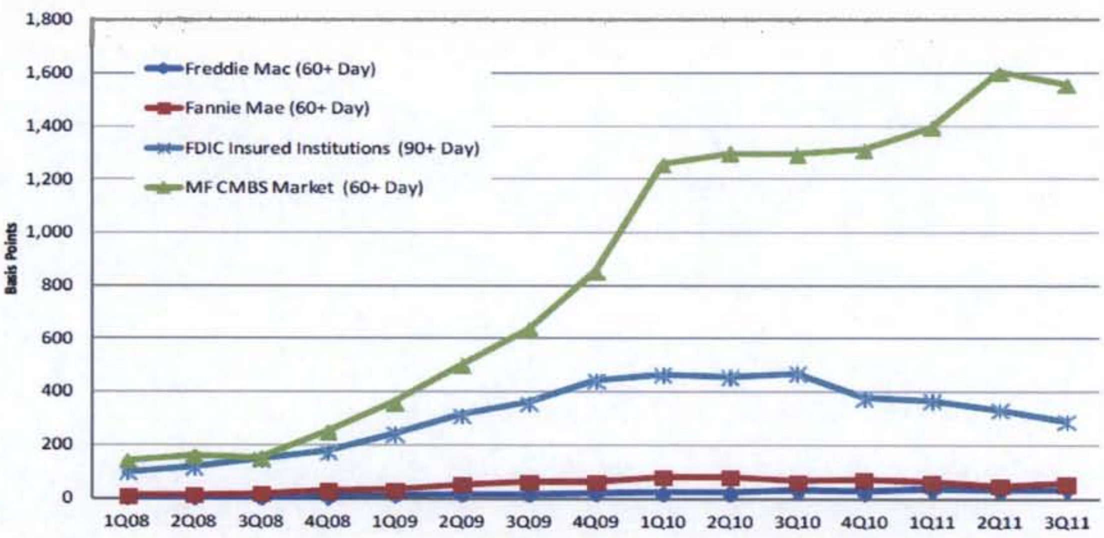
RE: Proposed Rule, Credit Risk Retention
OCC Docket No. 2011-0002; Federal Reserve Docket No. R-1411; FDIC RIN 3064-AD74;
SEC File No. S7-14-11; FHFA RIN 2590-AA43, HUD *Docket No. FR-5504-P-01*

Thank you for meeting with us on March 28, 2012 and giving us the opportunity to discuss our views on the importance of establishing meaningful risk retention within the Commercial Mortgage Backed Securities (CMBS) asset class. We acknowledge that risk retention is by no means a "silver bullet", however we believe that if properly implemented, it will help create a more resilient business model that will attract long term capital to the sector. Our hope is that this improved model will enable originate-to-distribute (CMBS) lenders to make commercial mortgage loans throughout the business cycle and will hopefully avoid a repeat of the market shut-down that occurred in 2008 and 2009 where many real estate owners and prospective buyers were simply not able to borrow.

In its current form, we believe the CMBS lending model has a fundamental flaw where loan originators are compensated on the volume of loans made rather than on the quality of underwriting and the ultimate performance of the loans. This volume-over-quality incentive exists because a CMBS lender earns immediate profitability at the time of securitization and maintains no skin-in-the-game following securitization. The motivations are very different for a portfolio lender who earns profits evenly over time as long as the loans don't default and also retains a first-loss position that generally only produces a positive return as long as loans repay as expected. These different incentives result in an imbalance whereby a CMBS lender may define a "good" loan as a loan that it can sell while a portfolio lender defines a "good" loan as a loan that is expected to repay at maturity.

As the chart below depicts, CMBS loans have vastly underperformed portfolio lender loans during the financial crises and the ensuing recovery, at least in part due to these very different motivations. As an example, Fannie Mae DUS loans, where originators retain a pari-passu first loss exposure alongside Fannie Mae, have a current delinquency rate of approximately 0.5% vs 15+% for CMBS multifamily loans.

Historical delinquency data:



Sources:
FDIC Insured Institutions: FDIC Quarterly Banking Profile – Loan Performance Data (Multifamily only).
MF CMBS Market: TREPP. 60+ days, in foreclosure, REO, or non-performing balloons.
Fannie Mae: 3Q11 delinquency rate from Form 10-Q for the quarter ended September 30, 2011.
Freddie Mac: Multifamily delinquency performance is based on UPB of total Multifamily mortgage portfolio and includes mortgage loans that are two monthly payments or more past due or in the process of foreclosure as of period end.

The objective of establishing risk retention is to encourage a CMBS lender to think more like a portfolio lender, where the quality of the loan is of paramount importance and volume is a secondary consideration. We suggest that in order to accomplish this objective, any proposal must: (a) establish meaningful skin-in-the-game such that future loan defaults have an economic impact upon the lender and (b) align CMBS lender profitability with future loan performance. These objectives are equally important and, if accomplished, will likely result in better and more stable loan performance that is required to attract capital to the CMBS sector over the long term.

In order to achieve the above objectives, we propose the following:

1. Create meaningful issuer skin-in-the-game – the issuer/B-piece buyer should retain 5% of proceeds, not par, in each securitization. The "Crapo Amendment" permits the B-piece buyer to retain risk in lieu of the issuer, however we believe this substitution weakens the risk retention proposal, since the issuer will still be motivated to originate loans that it can sell to the B-piece buyer and will be unaffected by future loan defaults (volume over quality will prevail). The issuer should retain at least some risk, perhaps alongside the B-piece buyer, in order to move towards a portfolio lender model.
2. Align profitability with loan performance – CMBS lenders should earn the excess interest produced by each loan individually over the weighted average cost of CMBS liabilities on a monthly basis, until such loan is transferred to the special servicer. Following transfer, any future excess interest should be trapped for that particular loan to cover expenses and losses.

If both of the above proposals are implemented, we believe a CMBS lender will be encouraged to originate loans as if it were a portfolio lender – profitability is only earned while loans perform and future loan defaults have a meaningful economic impact on the lender.

We acknowledge that consolidation is a primary consideration for issuers, and if the amount or form of credit risk retention would require consolidation, the accounting rules could limit the amount of CMBS issuance. We would encourage the regulators and the Financial Accounting Standards Board (FASB) to develop rules to ensure that consolidation under FASB Statement 167 is never triggered solely by the issuer's risk retention.

During our meeting, you had mentioned receiving comment letters suggesting that any implementation of risk retention would lead to higher borrowing costs, thereby potentially choking off the market. We respectfully disagree that properly implemented risk retention would shut down the market or materially increase the cost to borrowers. In fact, any temporary increase in the cost to borrowers could be reversed through tighter CMBS spreads if investors' confidence in the sector improves with the recognition of better alignment of interest between CMBS lenders and investors.

Our arguments as to why borrowing costs won't substantially increase and why any incremental cost won't shut down the market are as follows:

(1) If the B-piece buyer is permitted to retain risk in lieu of the issuer, borrowing costs should not increase at all. The only change from the current model involves the B-piece buyer retaining 5% of proceeds rather than 5% of par (equates to approximately 2.5% of proceeds). Representatives from two B-piece buyers at the meeting indicated that they would be willing to buy the next 2.5% of proceeds at current market rates. If other B-piece buyers instead require higher returns than would otherwise be available for these lower risk tranches, those B-piece buyers should be able to use leverage in order to generate returns consistent with their hurdle rates.

(2) If the issuer retains risk instead of the B-piece buyer, then the issuer will need to hold capital against the retained position. This would be consistent with the long-standing practice and present cost of doing business as a portfolio lender. Prudential Mortgage Capital Company, a national full-service, commercial and multifamily mortgage finance business, has concluded that even with the burden of capital charges, their business in the capacity of a CMBS originator would continue to be profitable.

(3) Even if borrowing costs do marginally rise, we believe this incremental cost could easily be offset by tighter CMBS spreads. As previously mentioned, properly implemented risk retention should improve investor

confidence in the sector, thereby attracting new long term capital that could result in tighter spreads of at least 40-50 basis points.[1]

(4) While spreads should tighten as described above, investors may remain skeptical and hesitant, preferring to observe loan performance under the new model over a period of time before committing more capital to the sector thereby delaying spread tightening. As a result, borrowing costs may marginally increase for a period of time, however the magnitude of the rise should be well within the recent historical volatility of CMBS break-even coupons and should not disrupt the market.[2,3]

Borrowing costs could rise far more substantially if the current CMBS lending model remains unchanged and the next downturn in the commercial real estate cycle begins. While CMBS 3.0 does incorporate several positive changes to the CMBS market, lending motivations and practices remain unchanged. As more lenders are attracted back to the market at the prospect of earning 2-5 points of immediate profitability, we fear loan underwriting would undoubtedly continue to weaken and investors, lacking confidence in practices, may again flee the market in mass during the next recession, resulting in substantial CMBS spread widening. At the onset of the financial crisis, the weighted average spread of CMBS liabilities rose from 90 bps to 1700 bps, thereby shutting borrowers out of the market for over two years. A change to the lending model is critical to avoid repeating mistakes and a modest temporary, or even lasting, rise in borrowing costs seems like a small price to pay in order to permit borrowers access to the market through future business cycles.

While risk retention is by no means a "cure all", we believe it will help align incentives between CMBS lenders and investors and is critical to reestablishing the asset class as a significant and stable source of capital to commercial real estate owners. If our proposal to align profit incentives with loan performance through loan-level interest-only strips is incorporated into the regulation, another comment period would seem appropriate to allow market participants to further debate the issue with the goal of hopefully reaching consensus.

Sincerely,

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[1] Assuming Super Senior AAA (70% of the structure) reestablishes its pre-crisis relationship with AAA Credit Cards, AAA Autos and AA Corporates and subordinate tranches (30% of the structure) tighten in proportion to Freddie Mac CMBS unguaranteed subordinate spread levels.

[2] CMBS breakeven coupon is defined as the loan coupon that would result in zero profit to the issuer. Actual CMBS coupons are typically 50-100 bps above breakeven.

[3] The standard deviation of CMBS breakeven coupon was +/- 525 bps during the onset of the recession and has decreased to 40 bps since the market revival in 2010.