



November 2, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank and Ranking Member Bachus:

As the Financial Services Committee considers the recently released Financial Stability Improvement Act (FSIA) committee print, the Mortgage Bankers Association¹ wishes to express its very strong opposition to the bill's provisions that would broadly require additional "risk retention" for residential and commercial mortgage financing and securitization.

Creditors and securitizers of residential loans will already be subject to risk retention under the provisions of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, which passed the House earlier this year, and which Chairman Frank has indicated will be merged with the larger regulatory reform package moving through the House this fall. To avoid the prospect of creditors and securitizers being forced to comply with two conflicting provisions, we urge you to revise the FSIA to exclude risk retention requirements for creditors and securitizers of residential loans, and instead subject them to the provisions of H.R. 1728. Moreover, we believe commercial loans, as business-to-business loans, should be excluded from the bill altogether.

While MBA understands the committee's purposes in developing these provisions – to assure that lenders and securitizers have a stake in the successful performance of loans and pools – the FSIA's broad requirement for risk retention for all creditors and securitizers would have particularly dire consequences for the mortgage markets. Coverage of all residential loans under FSIA would unnecessarily stem competition, reducing choices and increasing the costs of credit for consumers. In contrast, the more targeted provisions under H.R. 1728 would require risk retention only on higher-risk loans where these requirements may be warranted.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Risk Retention for Residential Mortgage Lending and Securitization

The FSIA would require lenders to retain up to ten percent of the credit risk on all loan sale transactions regardless of whether the loan purchaser intends to permanently hold the loan in its own portfolio or resell it into the secondary market. It would also require that entities that acquire mortgages and issue mortgage-backed securities (MBS) also retain up to ten percent of the risk on loans they securitize.

Today, nondepository independent mortgage bankers – mostly smaller mortgage companies – offer competitive pricing and quality service for sustainable financing to consumers in local markets. Consumers choose their services for more than 40 percent of all mortgage loans and 45 percent of Federal Housing Administration (FHA) loans. To provide financing to consumers, these creditors sell loans into the secondary market. But this process simply does not operate in a manner that would allow them also to retain credit risk for all residential loan originations.

If the requirements under FSIA are made applicable to all creditors for residential loans, independent mortgage bankers would be forced out of business. At the same time, smaller community banks and even larger depositories would be constrained from lending – and available funds for home financing would be reduced by countless billions of dollars – to meet reserve requirements. All of these factors would work to unnecessarily constrict the availability of credit and increase its cost to consumers.

H.R. 1728 offers the basis for a better approach to risk retention by creditors and securitizers for residential mortgages. It requires risk retention by creditors of five percent, and only for “not qualified mortgages” that have characteristics such as allowing deferral of principal or interest, negative amortization, balloon payments, and higher interest rates that present additional risks to consumers, may invite steering and – in the view of the Congress – necessitate additional protections. The bill allows federal banking agencies to apply the risk retention requirements to securitizers of certain residential mortgages in addition to or in substitution for the requirements that apply to creditors under the bill. It also allows federal banking agencies to determine the breadth of and appropriate exceptions to the retention requirements. Finally, H.R. 1728 includes numerous other requirements intended to promote better loan performance in addition to the bill’s risk retention provision.

Risk Retention for Commercial Real Estate

Over the last two decades, commercial real estate has helped fuel our nation’s economic growth while providing jobs and services to local communities and housing for millions of Americans in multifamily dwellings. Lately, however, uncertainty about the commercial real estate market has hampered its ability to be an engine for growth and provider of affordable housing. The addition of a risk retention requirement for commercial and multifamily mortgages would harm the recovery of this market and would be unnecessary in light of existing practices.

Commercial real estate transactions are business-to-business transactions. Commercial real estate investors and lenders weigh a variety of risks and benefits in making their decisions, and the market’s structure – from the relative security of a first-lien mortgage to the higher risk and higher yield of mezzanine debt or preferred equity – requires a

The Honorable Frank and Bachus

November 2, 2009

Page 3

level of business sophistication to understand. As a point of illustration, the average size of a loan originated for the CMBS market in 2007 was \$26 million. As a business-to-business transaction among sophisticated participants, risk retention is not required to provide consumer protection.

More importantly, CMBS have a first loss component that specialized investors purchase (B- piece). Because these investors are in a first loss position, they perform exhaustive due diligence on the loan pool that comprises the CMBS. Through this process, B-piece investors will require loans with inferior credit quality to be pulled from the loan pool. Only after the B-piece investors have committed to the CMBS loan pool are the investment grade (AAA, AA, A, BBB) portions of a CMBS loan pool offered for sale. A powerful incentive for CMBS sponsors to contribute high quality loans to the CMBS pool is that they are often required to retain the loans that have been rejected by B-piece buyers. In the case of CMBS, there already exists a category of investors that assume the risk of the first loss position, which negates the need for issuer-based risk retention. For these additional reasons, commercial real estate financing does not warrant coverage under the bill.

Conclusion

We urge policymakers to ensure that reforms aimed at the securitized credit markets are customized and applied appropriately to the mortgage markets to avoid unintended consequences. Tailoring the final regulatory reform proposals and avoiding a “one-size-fits-all” approach will better protect consumers and support efforts to restore lending for housing – and the capital markets’ investments that fuel such lending – that is critical to our nation’s recovery. Such an approach would avoid potentially severe unintended consequences that a generic approach to securitization regulatory reform could foster.

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

Sincerely,

A handwritten signature in cursive script that reads "John A. Courson". The signature is written in black ink and is positioned above the printed name and title.

John A. Courson
President and Chief Executive Officer