

# THE FINANCIAL SERVICES ROUNDTABLE

*Financing America's Economy*



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August 1, 2011

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Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve  
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Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
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Washington, D.C. 20429  
Attention: Comments/Legal ESS

Regulations Division  
Office of General Counsel  
Department of Housing and Urban  
Development  
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Federal Housing Finance Agency  
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Office of the Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 2-3  
Washington, D.C. 20219

**RE: Credit Risk Retention**

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Messieurs and Mesdames:

I have attached the comments of The Financial Services Roundtable (the “Roundtable”) on the joint proposal<sup>1</sup> by the Securities and Exchange Commission, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Department of Housing and Urban Development to require retention of a material portion of the credit risk of assets used in securitizations as mandated under Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the

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<sup>1</sup> Credit Risk Retention, OCC Docket No. 2011-0002; Federal Reserve Docket No. R-1411; FDIC RIN 3064—AD74; Securities and Exchange Commission File No. S7-14-11; and FHFA RIN 2590—AA43; 76 FR 24090 (Apr. 29, 2011) (the “Proposing Release”).

“Dodd-Frank Act”).<sup>2</sup> The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$ 92.7 trillion in managed assets, \$ 1.2 trillion in revenue, and 2.3 million jobs.

The Roundtable’s comments on the Proposal address solely the non-residential mortgage asset classes. The Roundtable’s Housing Policy Council’s comment letter dated July 29, 2011, addresses the residential mortgage asset class.<sup>3</sup> We endorse the Housing Policy Council’s comment letter.

In brief, the Roundtable’s enumerated comments are:

- The Proposals are too prescriptive to accommodate existing securitization practice, even in well-performing transactions. The Roundtable urges the Agencies to adopt a more principles-based approach that will better facilitate the necessary tailoring that occurs in every transaction.
- The mandated percentage of retained credit risk should not exceed five percent of the credit risk of the assets as contemplated by section 941 of the Dodd-Frank Act.
- An originator should be permitted to retain credit risk associated *solely with respect to the assets it originates*, instead of the aggregate risk of the securitized pool. The parties should be allowed to divest or hedge their economic interest upon expiration of the initial risk retention period.
- Any entity in the consolidated enterprise should be allowed to hold the retained credit risk interest. Sponsors also should be allowed to allocate the retained credit risk interest among themselves, and not be required to designate only one sponsor to hold the entire interest.
- The “vertical slice” option creates a significant alignment of interest with investors in asset-backed securities transactions. However, regulators ought to allow the parties to tailor the form of credit risk retention to address the unique attributes and complexities of particular asset-backed securities structures.
- The proposed “horizontal first loss residual interest” over-allocates credit risk to the sponsor, and contains restrictions that are unnecessary to preserve an alignment of interests with investors.

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<sup>2</sup> Pub. Law No. 111-203, § 939A, 124 Stat. 1887 (July 21, 2010).

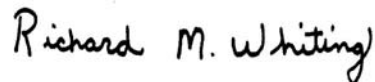
<sup>3</sup> *Comments of Housing Policy Council, “Credit Risk Retention”* (July 29, 2011), available at [http://www.fsround.org/fsr/policy\\_issues/regulatory/pdfs/pdfs11/riskretentionletterQRM.pdf](http://www.fsround.org/fsr/policy_issues/regulatory/pdfs/pdfs11/riskretentionletterQRM.pdf).

- The “representative sample” is too cumbersome and restrictive.
- Although the “sellers’ interest” as it is used today does not match the proposed definition, we believe it provides robust and comprehensive alignment of interests between the seller and investors.
- The Agencies should withdraw the proposed “premium capture cash reserve account” rules in their entirety. These rules would eliminate some participants’ access to the market, because they cannot structure their transactions to meet rules that are inconsistent with the economic viability of the transaction.
- The Roundtable believes a process that requires all six regulators to provide interpretations or guidance in a joint action may create significant uncertainty and difficulty for market participants. Therefore, we believe a sponsor’s primary regulator (or the Securities and Exchange Commission, if the sponsor has no primary regulator) should provide interpretative guidance, no-action relief or legal opinions in response to requests for interpretations or guidance.
- The Roundtable endorses its Housing Policy Council’s comment letter dated July 29, 2011, which addresses the residential mortgage asset class issues.
- The Roundtable has significant concerns about the Agencies adopting final rules, and respectfully requests that the Agencies re-propose the regulations after taking into account public comments.

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The Roundtable and its members appreciate the opportunity to comment to the Agencies on the Proposal to require retention of credit risk in securitizations. If it would be helpful to discuss the Roundtable’s specific comments or general views on this issue, please contact me at [Rich@fsround.org](mailto:Rich@fsround.org). Please also feel free to contact the Roundtable’s Senior Regulatory Counsel, Brad Ipema, at [Brad.Ipema@fsround.org](mailto:Brad.Ipema@fsround.org).

Sincerely yours,



Richard M. Whiting  
Executive Director and General Counsel  
The Financial Services Roundtable

Attachment: THE FINANCIAL SERVICES ROUNDTABLE, *Comments on Credit Risk Retention under Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Aug. 1, 2011)

*With a copy to:*

*Office of the Comptroller of the Currency*  
The Honorable John G. Walsh,  
Acting Comptroller of the Currency

*Federal Deposit Insurance Corporation*  
The Honorable Martin J. Gruenberg,  
Acting Chairman

*Federal Housing Finance Agency*  
The Honorable Edward DeMarco,  
Acting Director

*Board of Governors of the Federal Reserve System*  
The Honorable Ben S. Bernake,  
Chairman

*The Securities and Exchange Commission*  
The Honorable Mary L. Schapiro,  
Chairman  
The Honorable Kathleen L. Casey,  
Commissioner  
The Honorable Elisse B. Walter,  
Commissioner  
The Honorable Luis A. Aguilar,  
Commissioner  
The Honorable Troy A. Paredes,  
Commissioner

Ms. Meredith Cross, Director, Division of  
Corporation Finance  
Ms. Katherine Hsu, Chief of Office of  
Structured Finance, Division of  
Corporation Finance

*Department of Housing and Urban Development*  
The Honorable Shaun S. Donovan,  
Secretary

Mr. Robert C. Ryan, Deputy Assistant  
Secretary for Risk Management and  
Regulatory Affairs