March 25, 2010

The Honorable Christopher J. Dodd
Chairman
U.S. Senate Committee on Banking,
Housing & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Richard C. Shelby
Ranking Member
U.S. Senate Committee on Banking,
Housing & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Dodd and Ranking Member Shelby:

The undersigned groups represent a broad segment of the U.S. economy that provide or use credit, including builders, developers and other borrowers of all types, lenders of all sizes, investors at all levels, and other service providers, among many others. It is from each of our unique perspectives that we view financial regulatory reform and have an interest in ensuring strong and vibrant credit markets that will support an economic recovery.

As you know, the $9 trillion structured finance markets are critical to supporting lending and overall credit availability for millions of Americans, from consumers looking to purchase or refinance a home, receive a student loan, or buy a car, to businesses that need capital to create jobs and fuel economic growth. The securitized credit markets have helped provide liquidity using private investors – such as pension funds, mutual funds, and endowments, among others – who bring their own capital to the table to fuel lending, contributing to approximately 40% of the credit in the United States over the last 15 years. Given the importance of these markets, we wholeheartedly agree with Treasury Secretary Geithner's statement that, "[b]ecause this vital source of lending has frozen up, no financial recovery plan will be successful unless it helps restart securitization markets for sound loans made to consumers and businesses – large and small."

Today, the securitized credit markets (which include residential and commercial mortgage loans, student loans, auto loans, credit card, small business, and corporate loans, among others) face a multitude of challenges that, when taken together, will undoubtedly impact the capital and liquidity needed to support credit availability:

- First, credit capacity remains constrained despite enormous borrower demand and significant loan maturities (e.g., $1 trillion in commercial mortgage loans alone in the next few years), while asset values continue to decline (i.e. there is an "equity gap" between loan amount and asset value) and the overall recession has affected job growth and business performance. This combination of difficulties is most keenly affecting the commercial and residential mortgage sectors.

- Second, at the same time that the securitized credit markets are a centerpiece of recovery efforts, new and retroactive accounting changes (known as FAS 166 and 167) have been finalized, and combined with new regulatory capital guidelines, will limit balance sheet capacity and the overall amount of capital that can be directed toward such lending and investing. These changes are now being implemented during an extraordinarily challenging time.

- Third, there are new proposals – known as "risk retention" – that would require loan "originators" and/or "securitizers" to retain a percentage (e.g. 5 percent) of every loan made or bond issued, which over time limits balance sheet and lending capacity. Of even greater concern, under the new accounting rules above, financial institutions could be required to account for 100 percent of the assets on balance sheet, and to hold additional capital based on such requirements, despite no material change in real credit risk beyond the retained piece.

The combined impact of these items creates tremendous uncertainty and impacts credit availability, which has a profound effect on our overall economic recovery. In fact, while there is growing recognition among market participants and financial regulators about the complications of such reform mandates, it still remains unclear what the combined impact will be in the short and long term, and this uncertainty today serves as one of the biggest impediments to new private lending and investing. Put simply, given the totality and far reaching implications of regulatory and accounting changes, there are serious concerns about the future viability of the securitization markets that are critical to borrower access to credit and an overall recovery.

In this regard, we are not alone in expressing such caution. Federal Reserve Board Member Elizabeth Duke, for example, observed that "[i]f the risk retention requirements, combined with accounting standards governing the treatment of off-balance-sheet entities, make it impossible for firms to reduce the balance sheet through securitization and if, at the same time, leverage ratios limit balance sheet growth, we could be faced with substantially less credit availability… As policymakers and others work to create a new framework for securitization, we need to be mindful of falling into the trap of letting either the accounting or regulatory capital drive us to the wrong model." Likewise, Comptroller of the Currency John C. Dugan recently echoed this concern: "[i]f we do not appropriately calibrate and coordinate our actions, rather than reviving a healthy securitization market, we risk perpetuating its decline – with significant and long-lasting effects on credit availability."

Accordingly, it is absolutely crucial that any reforms aimed at the securitized credit markets, such as a risk retention mandate, be examined in greater detail and in the context of other changes in order to strengthen these markets and better serve consumers and businesses. Such a review must consider how to accomplish public policy goals, while limiting adverse or unintended consequences. It should also take into account the differences in markets and types of financial products to ensure that reforms are customized and that financial regulators have explicit direction on the potential application of statutory changes in the various and inherently different asset classes. This approach has been recommended by the International Monetary Fund (IMF), which concluded that "policies designed to put more securitizer skin in the game also risk closing down parts of securitization markets if poorly designed and implemented… Before implementing such schemes, authorities should conduct impact studies to ensure that they fully understand the potential effects of all the regulations in their totality."

Therefore, as you seek to build a more robust financial system with improved transparency and important safeguards, we urge you to consider carefully the entirety of the reforms being contemplated in an effort to ensure that all reforms are coordinated and implemented in a way that fully supports their intended objectives. It is of vital importance that any new legislative, regulatory or accounting changes provide certainty and confidence, and that they support, and not impede, a recovery in the securitized credit markets that fuel our overall economy.

We appreciate your efforts to address challenging issues that are critical to restoring the flow of credit for consumers and businesses. We stand ready to work with you to achieve these goals.

Sincerely,

American Bankers Association
American Hotel & Lodging Association
American Resort Development Association
American Securitization Forum
Associated General Contractors of America
Building Owners and Managers Association International
Certified Commercial Investment Member Institute (CCIM Institute)
Commercial Real Estate Finance Council (formerly CMSA)
Community Mortgage Banking Project
Institute of Real Estate Management
International Council of Shopping Centers
Loan Syndications and Trading Association
Mortgage Bankers Association
NAIOP, Commercial Real Estate Development Association
National Apartment Association
National Association of Real Estate Investment Trusts
National Association of Real Estate Investment Managers
National Association of Home Builders
National Multi Housing Council
The Real Estate Roundtable
Securities Industry and Financial Markets Association

cc: Members of the Senate Committee on Banking, Housing and Urban Affairs