

January 20, 2012

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Subject: **Coalition Letter in Opposition to the Premium Capture Cash Reserve Account
in the Risk Retention Proposed Rule**

Ladies and Gentlemen:

The undersigned organizations are writing to provide the perspectives of the real estate and real estate finance industries regarding the Premium Capture Cash Reserve Account (“PCCRA”) provision of the proposed rule on credit risk retention (“Proposed Rule”)¹ under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² We urge the elimination of the PCCRA. While we recognize the extraordinary effort and coordination that were required to develop and publish the Proposed Rule and the public policy objectives of risk retention, the PCCRA, if included in the final rule, would severely curtail the issuance of non-Agency residential mortgage-backed securities (“RMBS”) and commercial mortgage-backed securities (“CMBS”). We are concerned that while the PCCRA may have been proposed as a way to support the purposes of risk retention, the actual effect of the PCCRA has much broader and harmful consequences to consumers, investors and other participants in private securitization markets.

¹ 76 Fed. Reg. 24090 (April 29, 2011).

² The Proposed Rule implements the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934, 15 U.S.C. § 78o-11, as added by section 941 of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376-2223 (July 21, 2010).

A strong opposition to the PCCRA was a common theme among the comment letters that were submitted by the undersigned organizations. The PCCRA will fundamentally alter the economics of the RMBS and CMBS business models and effectively eliminate the incentives for securitization. We therefore urge the agencies to withdraw the PCCRA from consideration.

Given the fragile state of the U.S. economy, the broader economic view is of vital concern to residential and commercial real estate lending organizations — particularly for “smaller market participants.”³ As a cost benefit analysis is performed on the impact of risk retention, we would strongly urge the federal regulatory agencies to take into account the PCCRA's chilling impact that would greatly curtail the non-Agency RMBS and CMBS markets — and the broader impact on both the real estate sector and the broader economy. The PCCRA, in effect, would severely restrict efforts to increase private capital to the residential and commercial real estate markets.

These PCCRA concerns were echoed in a *Special Report* authored by Mark Zandi and Christian deRitis of Moody's Analytics that stated:⁴

As a result of the way the premium capture rule is stated, the mortgage rate impact to borrowers would be significant— on the order of an increase of 1 to 4 percentage points depending on the parameters of the mortgages being originated and the discount rates applied....Yet the consequences of the rule as written could significantly impede the return of private securitization markets and permanently cement the government's role in housing finance.

A mutual concern that has been expressed by House and Senate policy makers was the lack of specific statutory authority in the Dodd-Frank Act to create the PCCRA. This concern was expressed in an August 1, 2011, letter from Chairmen Spencer Bachus and Scott Garrett to the heads of the federal regulatory agencies implementing the PCCRA that stated:

Specifically, the proposal contains a requirement- never discussed during the deliberations on what became the Dodd-Frank Act- that securitizers set aside the premium from sales of securities in so-called "premium capture cash reserve accounts" ("PCCRAs")....Cutting off or greatly reducing this vital source of capital [securitization]⁵ through the operation of a provision [PCCRA]⁶ that Congress never considered (or even contemplated) is bad policy and an inappropriate exercise of regulatory authority.

³ Board of Governors of the Federal Reserve System, “Report to the Congress on Risk Retention” (October 2010) at 3.

⁴ Moody's Analytics, Special Report – A Clarification on Risk Retention, September 22, 2010, pages 2-3.

⁵ Added for clarity.

⁶ Added for clarity.

The undersigned organizations strongly recommend that the PCCRA be withdrawn from consideration. However, to the extent that the federal regulatory agencies are considering moving forward with the PCCRA in any form, we would have strong concerns and would recommend that the modified PCCRA be made available for public comment in a Re-Proposal. The PCCRA, even in a modified form, merits careful industry analysis in order to determine its impact on the non-Agency RMBS and CMBS markets.

This letter represents the industry's collective position on the PCCRA; the individual responses by the undersigned organizations address their specific concerns regarding the PCCRA and the other elements of the Proposed Rule. We believe that the federal regulatory agencies can appropriately craft the Proposed Rule to ensure a liquid, credible, safe and sound non-Agency RMBS and CMBS market without the inclusion of the PCCRA.

Thank you for the opportunity to reiterate our concerns about the PCCRA as part of this critically-important rulemaking.

Sincerely,

American Land Title Association
American Resort Development Association
American Securitization Forum
Appraisal Institute
Building Owners and Managers Association (BOMA) International
CCIM Institute
Community Mortgage Banking Project
CRE Finance Council
Institute of Real Estate Management
International Council of Shopping Centers
Mortgage Bankers Association
NAIOP, Commercial Real Estate Development Association
National Apartment Association
National Association of Home Builders
National Association of Real Estate Investment Trusts
National Association of Realtors®
National Multi Housing Council
Realtors® Land Institute
Securities Industry and Financial Markets Association
Society of Industrial and Office Realtors®
U.S. Chamber of Commerce
The Real Estate Roundtable