June 26, 2012

Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, DC 20552

Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

**Re: RIN 1557-AD40; 7100 AD 70; 3064-AD74; 3235-AK96; 2590-AA43; 2501-AD53**

Ladies and Gentlemen:

The American Securitization Forum ("ASF")[1] appreciates the opportunity to provide this supplemental submission in connection with the notice of proposed rulemaking (the "Proposed Regulations") entitled "Credit Risk Retention" (RIN 1557- AD40; 7100 AD 70; 3064-AD74; 3235-AK96; 2590-AA43; 2501-AD53), issued pursuant to Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). We are submitting this letter in response to your questions regarding comments included in our letter dated June 10, 2011 (the "ASF Comment Letter").[2]

[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

[2] *See:* http://www.americansecuritization.com/uploadedFiles/ASF_Risk_Retention_Comment_Letter.pdf.

The first question related to whether a 5% participation interest in each loan that was issued by the trust and sold back to the sponsor as risk retention was the "economic equivalent" of a vertical slice. This is a very complicated question, but the short answer is that the two would likely not be equivalent. From a tax perspective, there may be differences between holding the 5% participation and holding 5% of each issued bond. It is our understanding that this analysis is done on a case-by-case basis and the ultimate outcome will depend on a variety of factors. However, in a typical REMIC structure it is possible that a 5% vertical slice would have a different tax effect than a 5% participation interest in each loan. With the vertical slice, the sponsor would hold a 5% interest in each class, typically including one or more senior classes, interest only classes, and subordinate classes, and the REMIC residual class. Each of these classes would have its own tax treatment and its own timing of income, and in the case of the REMIC residual class, application of the "excess inclusion rules." It is therefore possible that the aggregate tax effect of holding the 5% vertical slice would be to accelerate or otherwise affect the inclusion of income, as compared to holding the 5% participation. There are also potential differences from a capital perspective, given Basel III is currently in the proposal stage from the U.S. bank regulators. Ultimately, it is difficult to say whether either would be a "better" economic outcome for a sponsor, as that determination can only be made on a case-by-case basis as well. What is clear from our perspective is that the participation interest is a "cleaner" form of retention, as it does not require holding small interests across the capital structure of a securitization, each of which require separate tax and capital analysis. We think that alone is a reason to offer the option in the final rules.

The second question related to a 5% participation interest in each loan that was issued and retained by the sponsor as risk retention, and whether such an option would be viable for sponsors given the Penn Square bank receivership cases. The Penn Square cases do illustrate issues that need to be dealt with if you are a sponsoring bank selling loan participations into the securitization, because borrowers under the loans sold may also have deposits at the bank. These issues relate to potential setoff rights that the FDIC would have, and depositors may have, whereby the deposit liabilities of the bank may be set-off against amounts owing under the loan, to the detriment of the holder of any participation in the loan sold by the bank. These issues would, of course, not apply to non-bank sponsors. With respect to securitizations sponsored by banks, it may be possible to eliminate the setoff risk by using a two-step transfer, in which the bank sells the loans as whole loans to a non-bank affiliate (the "depositor"), and the depositor then sells a 95% participation interest in each loan to the issuing entity and retains the 5% participation in each loan. Ultimately, we believe that securitizations involving participations could be structured in ways that mitigate or eliminate risks created by Penn Square, and that a 5% participation created and retained by a sponsor would be a viable risk retention option in many situations.

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Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or at tdeutsch@americansecuritization.com.

Sincerely,

Tom Deutsch
Executive Director
American Securitization Forum