



February 6, 2014

The Honorable Janet L. Yellen
Chairman, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Mary Jo White
Chairman
Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Thomas J. Curry
Comptroller of the Currency
U.S. Department of the Treasury
250 E Street, SW
Washington, DC 20219

The Honorable Jacob J. Lew
Secretary
United States Department of the Treasury, and
Chairman, Financial Stability Oversight Council
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

**Re: Single Borrower Single Credit Disclosure Framework
Proposed Rule, Credit Risk Retention
OCC Docket No. 2013-0010; Federal Reserve Docket No. R-1411;
FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-
AA43**

Ladies and Gentlemen:

On October 30, 2013, the Commercial Real Estate Finance Council (“CRE Finance Council” or “CREFC”) submitted its comments on the proposed rule for credit risk retention for asset-backed securities,¹ which was jointly published by your respective agencies (collectively, the “Agencies”) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.²

¹ Proposed Rule, Credit Risk Retention, 78 Fed. Reg. 57928 (Sept. 20, 2013) (hereafter, “NPR” or “Proposed Rule”).

² Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), Pub. L. No. 111-203, §941(b), 124 Stat. 1376, 1896 (2010) (creating Securities Exchange Act § 15G (i)(2)).

As part of those comments, we advocated for an exemption for Single Borrower/Single Credit (“SBSC”) transactions,³ and in our conversations with the Agencies, we agreed to provide a disclosure regime to ensure these transactions are transparent and to recommend a minimum deal size to which the exemption could attach. With respect to the minimum deal size, there is a strong consensus across both the issuers and the investors that \$200 million is an appropriate threshold for the exemption. With respect to the requisite disclosure, there also is a strong consensus supporting the disclosure framework summarized in the attachments; we also developed proposed draft regulatory language that would implement that regime which is attached, as well. The process we used to develop these consensus and the underlying logic for the proposals are discussed below.

The CRE Finance Council is the collective voice of the entire \$3.1 trillion commercial real estate finance market. Its members include all of the significant portfolio, multifamily, and commercial mortgage-backed securities (“CMBS”) lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds, specialty finance companies, REITs and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.⁴ Our industry plays a critical role in the financing of office buildings, industrial complexes, multifamily housing, retail facilities, hotels, and other types of commercial real estate that help form the backbone of the American economy.

One topic of discussion with Agencies’ staff related to our comments surrounding SBSC transactions, in which we advocated for an exemption for such deals. Given that these transactions only involve one loan, and that historically, there has been no role for B-Piece Buyers, the CRE Finance Council believed that they should be treated differently than those transactions requiring risk retention. Additionally, for SBSC transactions, transparency is extremely high because granular loan details are reported to potential investors; and their loss experience has been exceedingly low – well below that of conduit CMBS and other asset classes – and has been more on par with non-securitized corporate bonds. There was a strong consensus among all CRE Finance Council members – including a majority consensus among the Investment-Grade Investors (“IG Investors”) whom the retention rules are designed to protect – that these SBSC deals do not present the issues that the Proposed Rule is intended to address and therefore should be completely exempt from the risk retention rules.

In order to ensure such transparency that inherently creates low risk transactions, we are providing the attached regulatory language that constructs a disclosure regime for SBSC transactions. As with our original comments, the CRE Finance Council developed this language in consultation and with the input of various constituencies.⁵ The result is a proposed disclosure

³ See Letter from CREFC to the Agencies (Oct. 30, 2013), at Part B.1, Page 13 (on file with the Agencies) (“Comment Letter”).

⁴ A complete CRE Finance Council Membership list is attached to the CREFC Comment Letter at Appendix 12.

⁵ As explained in the Comment Letter, the CRE Finance Council operates member forums that are organized around each of our core market constituencies: IG Investors; B-Piece Investors; Issuers; Servicers; High Yield Investors; and Portfolio Lenders. The process of soliciting input from these forums is overseen and moderated

regime that has the support of the entire CMBS industry, including the investors that would be party to these SBSC transactions.

The regime was developed to address the concern that while there is disclosure in the 144A market, there should be a mandatory disclosure regime in place in order for SBSC transactions to be exempt from the risk retention rules. There are three pillars to this proposed disclosure regime. First, the disclosure requirements of a public CMBS offering shall be met, and the offering document must provide various disclosures, including:

- (i) A summary of the material terms of the loan documents;
- (ii) A description of the property or properties;
- (iii) A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure;
- (iv) A summary of any material property management agreement, franchise agreement, and ground lease;
- (v) A description of any material mezzanine, other subordinate debt, or preferred equity; and
- (vi) An identification of material risk factors related to the loan or loans and the property or properties.

Second, the qualified investor will be entitled, upon request, to receive various additional information, including:

- (i) Third party reports (i.e. appraisals, environmental reports, and engineering/building condition reports);
- (ii) All loan documents, including the loan agreement, promissory note, cash management agreement, mortgage/security agreement, and property management agreement; and
- (iii) Copies of financial statements.

Third, the proposed regime provides for a system of ongoing reporting, which would include the monthly CREFC Investor Reporting Package (“IRP”) applicable to the transaction. As can be seen in the attachments, the IRP is a comprehensive document consisting of historical and current data, specific informational reports, and loan files.

Finally, in response to staff concern that very small SBSC deals could be used as a way to elude the applicability of the core retention regime, the CRE Finance Council is proposing a \$200 million minimum deal size to qualify for the exemption in order to alleviate that concern.

The CRE Finance Council appreciates the amount of effort and work the Agencies have put forth in the development of the Proposed Rule, and in preparation of conversations about our Comment Letter. We have always valued the opportunity to work with the Agencies to further explain our ideas and to alleviate any concerns the Agencies may have with those ideas. The

by the CRE Finance Council’s Policy Committee, which is comprised of the leaders of each of the forums and certain members of CRE Finance Council’s Executive Committee.

attached SBSC transaction disclosure regime should alleviate any concerns with exempting these deals from the risk retention framework, and we are happy to discuss at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. Renna", with a long horizontal flourish extending to the right.

Stephen M. Renna
President & CEO
CRE Finance Council

cc: The Honorable Shaun Donovan
Secretary
United States Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410-0500

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20024

SINGLE BORROWER/SINGLE CREDIT EXCEPTION

To be inserted within:

§ .14 Definitions applicable to qualifying commercial loans, qualifying commercial real estate loans, and qualifying automobile loans.

Offering Document means the offering circular or memorandum made available to investors in connection with the offering of CMBS as part of a Single Borrower/Single Credit transaction.

Single Borrower/Single Credit transaction means a securitization of a single commercial real estate loan or a group of cross-collateralized or cross-defaulted commercial real estate loans that represent the obligation of one or more related borrowers secured by one or more commercial properties under direct or indirect common ownership or control, and satisfying the requirements set forth in § __.15(d).

To be inserted within:

§ .15 Qualifying commercial loans, commercial real estate loans, and automobile loans

(d) Exception for Single Borrower/Single Credit transaction. Single Borrower/Single Credit transactions shall be subject to a 0 percent risk retention requirement under subpart B, provided that:

(1) Offering Document Disclosures. The Offering Document shall:

(i) Generally satisfy the applicable disclosure requirements set forth in 17 C.F.R. § 229.1100, *et seq.*, except for the requirements in § 229.1112 insofar as it relates to the borrower or borrowers or the property of properties;

(ii) Contain:

(A) A summary of the material terms of the loan documents for the loan or loans underlying the Single Borrower/Single Credit transaction, including material terms of cash management arrangements;

(B) A description of the related property or properties, including the following information regarding the property or properties underlying the Single Borrower/Single Credit transaction for the preceding three years (or shorter period for which such information is reasonably available to the securitizer):

(1) Historical operating financial information; and

- (2) Underwritten cash flow information for disclosed revenue and expense items;
 - (C) A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure;
 - (D) A summary of any material property management agreement;
 - (E) A summary of any material franchise agreement;
 - (F) A summary of any material ground lease;
 - (G) If there is any material mezzanine debt, subordinated debt or preferred equity related to the property or properties, a description thereof and a summary of the material terms of any related intercreditor agreement; and
 - (H) Identification of material risk factors related to the loan or loans underlying the Single Borrower/Single Credit transaction, the related property or properties, and the related borrower or borrowers.
- (iii) Disclose that the Single Borrower/Single Credit transaction is exempt from risk retention obligations in reliance on the Single Borrower/Single Credit transaction exception in §__.15(d).

(2) Additional Disclosures. In addition to the Offering Document satisfying the requirements set forth in §__.15(d)(1), the following additional information shall be made available in connection with the CMBS offering related to the Single Borrower/Single Credit transaction to prospective investors, upon their request, subject to clause (iii) of this paragraph (2):

- (i) Copies of third party reports related to the property or properties underlying the Single Borrower/Single Credit transaction, including the:
 - (A) Appraisal(s);
 - (B) Environmental report(s); and
 - (C) Engineering/building condition report(s); and
- (ii) Copies of material loan documents (except for the portions thereof subject to confidentiality obligations in favor of the related borrower or borrowers) for the loan or loans underlying the Single

Borrower/Single Credit transaction, including, to the extent applicable, the:

- (A) Loan agreement;
- (B) Promissory note;
- (C) Cash management agreement;
- (D) Mortgage and security agreement;
- (E) Any material property management agreement;
- (F) Agreements governing any mezzanine debt or subordinate debt preferred equity related to the property or properties underlying the Single Borrower/Single Credit transaction, including any related intercreditor agreement; and
- (G) Material documents or information used by the originating lender in its underwriting of the loan, including but not limited to property tax bills and independent real estate tax analysis.

(iii) Notwithstanding the foregoing, the making available of the information set forth in clauses (i) and (ii) of this paragraph (2) may be conditioned on the prospective investor entering into a commercially reasonable confidentiality agreement.

(3) Ongoing Reporting. The agreement setting forth the requirements for ongoing reporting to CMBS investors in connection with the Single Borrower/Single Credit transaction shall require that the following information shall be made available to investors and prospective investors via the certificate administrator's or trustee's website (upon making applicable certifications) on an ongoing basis:

- (i) Monthly distribution date statements prepared by the trustee or certificate administrator;
- (ii) Monthly Commercial Real Estate Finance Council Investor Reporting Packages applicable to the transaction;
- (iii) Notices of amendments to the loan documents for the loan or loans underlying the Single Borrower/Single Credit transaction, requests for termination of the related special servicer, and other material items of the type required under Form 10-D, pursuant 17 C.F.R. § 240.13a-17, for the Single Borrower/Single Credit transaction, except for the

requirements in 17 C.F.R. § 229.1112 insofar as it relates to the borrower or borrowers;

- (iv) Periodic financial information furnished by the borrower or borrowers pursuant to the loan agreement;
- (v) Annual assessments of compliance with servicing criteria and related public accounting firm attestation reports for entities performing a servicing function as contemplated by 17 C.F.R. § 229.1122 and servicer compliance statements as contemplated by 17 C.F.R. § 229.1123; and
- (vi) Any updates to the reports listed in subparagraph (2)(i) of this paragraph, if required to be obtained pursuant to the servicing agreement for the Single Borrower/Single Credit transaction.

To be inserted within:

§ .17 Underwriting standards for qualifying CRE loans.

- (c) Exception. The provisions of this section shall not apply to Single Borrower/Single Credit transactions.

CREFC REQUESTED EXEMPTION FOR SINGLE BORROWER DEALS

CREFC requests that Single Borrower/Single Credit transactions be exempted from the credit risk retention rules (the “Single Borrower/Single Credit Exemption”).

A “Single Borrower/Single Credit” (“SBSC”) transaction would be defined as “A securitization of a single commercial real estate loan or a group of cross-collateralized commercial real estate loans that represent(s) the obligation of one or more related borrowers secured by one or more commercial properties under direct or indirect common ownership or control, and satisfying the following Disclosure Requirements in connection with the related securities offering.”

SBSC transactions are substantially similar to, and compete directly with, the whole loan lending activities of portfolio lenders with the further refinement that SBSC transactions allow capital markets investors to purchase higher risk and correspondingly higher yielding, subordinate interests in such loan(s). Current disclosure requirements for these transactions offer 144A investors robust disclosure measures. If SBSC transactions are to be exempted from risk retention under Dodd-Frank, the disclosure requirements for SBSC transactions ought to mirror the disclosure requirements generally required by portfolio lenders. This will ensure investors continue to be provided with material information to assess the concentrated credit risks within SBSC transactions.

DISCLOSURE REQUIREMENTS:

- I. Offering circular or memorandum (the “Offering Document”) will generally satisfy the disclosure requirements of a public CMBS offering:
 - A. All Regulation AB requirements for CMBS transactions (to the extent applicable) will be satisfied, except for the requirement for Regulation S-X financial statements required under Item 1112 of Regulation AB.
 - B. The Offering Document will disclose historical operating financial information for the property or properties for the preceding 3 years (or such shorter period for which such information is reasonably available), together with underwritten cash flow information for disclosed revenue and expense items.
 - C. Securitization due diligence/disclosure obligations under Rule 193 (implementing Section 945 of Dodd-Frank Act) will be satisfied.
 - D. The Offering Document will provide the following disclosures regarding the loan or loans and the property or properties due to asset/credit concentration:
 - A summary of the material terms of the loan documents, including material terms of cash management arrangements
 - A description of the property or properties

- A description of the borrower, the borrower sponsorship and guarantors, and related ownership structure
 - A summary of any material property management agreement
 - A summary of any material franchise agreement
 - A summary of any material ground lease
 - If there is material mezzanine, other subordinate debt, or preferred equity, a description thereof and a summary of the material terms of any related intercreditor agreement
 - Identification of material risk factors related to the loan or loans and the property or properties
- II. After entering into an industry standard confidentiality agreement, any otherwise qualified investor will be entitled, upon request, to receive the following additional information:
- A. Copies of third party reports:
1. Appraisal
 2. Environmental Report
 3. Engineering/Building Condition Report
- B. Copies of all relevant loan documents (except for portions thereof subject to confidentiality obligations), including but not limited to the following:
1. Loan Agreement
 2. Promissory Note
 3. Cash Management Agreement
 4. Mortgage/Security Agreements
 5. Property Management Agreements
 6. Documents and Agreements governing material mezzanine or other subordinate debt
 7. Other material employed in the underwriting of the loan, including but not limited to property tax bills, independent real estate tax analysis, etc.
- C. Copies of financial statements and rent rolls, to the extent required to be provided by the borrower to the loan seller.
- III. The Offering Document would disclose that the transaction is exempt from risk retention obligations in reliance on the Single Borrower/Single Credit Exemption.
- IV. Ongoing Reporting.

The following regular reporting and ad hoc information would be made available to investors and prospective investors (upon delivery of applicable certifications):

- A. Monthly Distribution Date Statements
- B. Monthly CREFC Investor Reporting Package (IRP) applicable to the transaction, which is required per the CMBS loan documents (See Appendix 1 for detailed reporting and information provided by IRP)
- C. Notices of amendments to the mortgage loan documents, requests for termination of special servicer, and other material items of the type required under Form 10-D
- D. Annual Assessments of Compliance with Servicing Criteria and related Public Accounting Firm Attestation Reports
- E. Periodic financial information furnished by the borrower that is required under the loan agreement
- F. If required to be obtained pursuant to the applicable servicing agreement, updated appraisal reports and environmental assessments