

Statement of
John C. Dugan
Comptroller of the Currency
On the Federal Deposit Insurance Corporation's
Advance Notice of Proposed Rulemaking on Securitizations
December 15, 2009

I support efforts to change the way that securitizations are structured to increase market confidence, prevent abuses, provide less incentive for poorly underwritten loans, and most importantly, re-start securitization markets in a manner that takes account of both credit availability concerns and prudential considerations. After careful examination of the previous Board case, and after hearing concerns expressed by other agencies and other interested parties, I was not comfortable moving forward with a specific Notice of Proposed Rulemaking. As a result, I am pleased that we are going forward with an Advanced Notice of Proposed Rulemaking or ANPR, which I will support. I think this approach will stimulate robust comment on this issue now, but in a way that will minimize unintended consequences.

While the addendum to the ANPR includes examples of possible provisions that might be included in an NPR as a way to help crystallize issues for comment, I want to be clear that these are only examples, do not indicate the presumptive view of the Board, and in fact include a number of provisions with which I would have significant concerns.

- For example, recent studies note that a policy of requiring a rigid minimum retention requirement risks closing down parts of securitization markets if

poorly designed and implemented. Before proposing and implementing such a requirement for all securitizations, further analysis is needed to ensure an understanding of the potential effects of the different ways in which risk could be retained.

- Similarly, limiting certain securitization transactions to no more than six credit tranches could significantly limit issuer flexibility to meet differing cash flow needs of various investors, as well as restrict investor interest if this structure is not deemed as liquid as competing alternatives.
- The sample NPR would bar all external credit support; however, external support may serve to reduce risk to the banking system. While maintaining “skin in the game” is a worthwhile objective, restricting all third party support may result in investors demanding higher rewards, and these costs are likely to be passed on to consumers.
- The sample NPR would subject private placements to the same disclosure rules applied to public issuances, even though investors in the private placement market likely have different informational needs, as recognized by differing SEC disclosure requirements.
- In addition, the suggested requirement that mortgages to be securitized be retained on the institution's balance sheet for 12 months prior to transfer would diminish the institution's capacity to make new loans, because the institution would have to hold capital against these prior to securitization. This requirement could also cause lenders to prefer prime quality borrowers, to the detriment of credit availability for non-prime borrowers.

- The suggested five percent retention would also make sales treatment more difficult to achieve under FAS 166/167, with capital and credit constriction implications.
- And the suggested requirement that all residential mortgages in a securitization must comply with all regulatory standards as well as supervisory guidance in effect at the time of origination would introduce potentially subjective factors into assessing qualification of the loans. How would compliance with this standard be evaluated? And what if a very minor portion of a securitization did not qualify?

These are all substantive questions and concerns on which I hope we receive robust comment. In fact, I hope that other agencies that have a keen interest in this rule and specific expertise to contribute, such as the Federal Reserve and the Securities and Exchange Commission, will also continue to comment and contribute to the process as we move forward.

In so doing, I think we also need to be mindful of the real prospects for Congressional action in this area. Key issues and questions raised by the ANPR are also addressed by the financial reform legislation in both Houses of Congress, which could become law in the not-too-distant-future. Those legislative proposals are not the same as an FDIC proposal, however, in that they are less specific, involve other agencies besides those represented on the FDIC board, and would apply across the board to all securitizations, not just those sponsored by insured depository institutions. If that legislation moves to enactment or much close to enactment, I think we will very much

need to take that broader process into account in order to avoid unnecessary overlap or conflicting requirements.

Finally, I do continue to have real concerns about an approach that would apply only to securitizations sponsored by insured depository institutions, and not to other financial institutions that sponsor securitizations. By imposing regulation in such a piecemeal way, we would run the risk of driving the market to foreign banks and less regulated financial institutions that are not subject to FDIC jurisdiction, while at the same time hindering the ability of depository institutions to meaningfully participate to provide additional credit to the economy. I think it would be far preferable to have rules that would apply across the board, as envisioned by the legislative proposals, than adopt a rule that applies only to insured depository institutions.

Having said all this, and despite my reservations, I do agree with the idea of pushing the process forward to get all interested parties to weigh in with comments on specific questions and issues that would help achieve the goal of a sensible approach that will foster prudent new securitizations. I think the best way to do that is to issue this ANPR now for comment, and I support moving forward on that basis.