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December 15, 2008

Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Re: Mortgage Servicing Accounts Interim Rule

Dear Mr. Feldman:

The American Bankers Association<sup>1</sup> appreciates this opportunity to comment on the FDIC's Interim Rule regarding deposit insurance rules for funds maintained in mortgage servicing accounts.<sup>2</sup> For the reasons stated below, we support adoption of this rule as proposed.

Currently, the FDIC's insurance rules distinguish between (a) deposits collected by mortgage servicers for the payment of principal and interest and (b) deposits collected by such servicers for the payment of taxes and insurance. *See* 12 CFR 330.7(d). The former are insured for the interest of each owner of the payments (*i.e.*, mortgagees, investors, or security holders) while the latter are insured for the interest of the mortgagor. This distinction recognizes the fact that the mortgagor no longer owns funds tendered in payment of the principal and interest but does still own the funds tendered for eventual payment of taxes and insurance.

The FDIC recognizes, however, that it can be very difficult for a servicer to identify, and determine the share of, all investors in a securitization (thereby making deposit insurance determinations difficult). This could lead to losses by, or delays in payments to, securitization investors of principal and interest payments. Depositors may withdraw principal and interest payments out of the servicing account to avoid these problems and in so doing create liquidity issues for the affected bank.

The FDIC, seeking to provide greater certainty about the extent of coverage of mortgage servicing accounts, has issued an interim final rule that determines

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<sup>1</sup> The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.6 trillion in assets and employ over 2 million men and women.

<sup>2</sup> 73 Fed. Reg. 61658 (Oct. 17, 2008).

insurance coverage on a per-mortgagor basis. The FDIC believes this will make it easier for servicers to identify the insured party, thus enabling the FDIC to pay deposit insurance more quickly. The rule states that the insurance coverage afforded to mortgagors as a result of this rule change “will not be aggregated with or otherwise affect the coverage provided to mortgagors in connection with other accounts the mortgagors might maintain at the same insured depository institution.”<sup>3</sup>

The ABA supports these changes. We agree that the approach taken in the interim rule will facilitate the identification of, and payment to, insured accountholders. This will remove a potential incentive to withdraw funds from a bank account and is appropriate given the complexities of many securitizations.

The changes also achieve a fair and workable solution for mortgagors. Because the mortgagor does not fully control the balances in mortgage servicing accounts, it is difficult to manage them in concert with other insured accounts to maintain levels that will be fully insured by the FDIC. The FDIC’s rule avoids this problem by stating clearly that the deposit insurance provided to mortgagors as a result of this rule will *not* be aggregated with other insurable accounts that the mortgagor has at the same bank. In this way, the FDIC is making available the full benefits of deposit insurance to the interested parties.

We appreciate the FDIC’s efforts to simplify the deposit insurance rules affecting mortgage servicing accounts, and we encourage the FDIC to adopt the interim rule as proposed.

Sincerely,

Mark J. Tenhundfeld

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<sup>3</sup> *Id.* At 61659.