MORTGAGE BANKERS ASSOCIATION

May 15, 2017

Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 – Basel
Switzerland

**Re: *Guidelines: Identification and management of step-in risk* (March 2017)**

Dear Basel Committee members:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the Basel Committee on Banking Supervision's second consultative document, *Guidelines: Identification and management of step-in risk*, issued in March 2017.[2]

We recognize that the Committee has made useful changes to its prior proposal. This includes aiming at a tailored rather than standardized approach; clarifying that the framework is designed to create a safety net to inform and supplement already approved reforms; focusing efforts on residual step-in risk; and not requiring automatic changes to Pillar 1 capital or liquidity on top of existing Basel standards.

This move to a tailored approach focused on residual step-in risk is particularly appropriate with respect to commercial and residential mortgage-backed securities (CMBS and RMBS) issued by US banks. As we described in our March 17, 2016 comment on the prior proposal,[3] a presumption of step-in risk for CMBS and RMBS in the US would be inconsistent with history.

As we also described in our prior letter, existing US standards already address potential step-in risk for Special Purpose Entities (SPEs), including CMBS and RMBS. For example, accounting standards under FAS 167 (issued in 2009 soon after the Great Recession began), which specify the circumstances under which an SPE must be consolidated in a reporting entity's balance sheet, already require assessment of whether the issuer has an implicit financial responsibility (i.e., step-in risk). Shortly after FAS 167 was issued, US regulators updated risk-based capital rules to require banks to maintain capital for assets consolidated under FAS 167. As a result, US banks already maintain capital on these assets that are not owned by the bank and that are supported by liabilities that the banks do not owe.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

[2] http://www.bis.org/bcbs/publ/d398.pdf.

[3] http://www.bis.org/bcbs/publ/comments/d349/mortgagebankers.pdf.

In addition, the Liquidity Coverage Rule in the US requires that contractual cash flows related to securitizations be included in cash outflows used in the liquidity coverage ratio, even for SPEs treated as sales under FAS 166 that do not have to be included in a bank's consolidated financial statements under FAS 167. In sum, existing US standards already comprehensively address step-in risk as to SPEs, including CMBS and RMBS.

While we appreciate the changes the Committee has made, we nevertheless strongly suggest that the Committee consider postponing indefinitely issuing the framework in final form. There does not appear to be an urgent need for the framework, and we have concerns about additional international standards that may not be consistent with US circumstances and priorities.

Should the Committee determine to finalize the framework, it should do so in a way that clearly indicates that each national supervisor has discretion to determine whether and how to apply it to its local context. For example, each national supervisor should have discretion to conduct its own assessment of the level of remaining residual step-in risk that exists within its jurisdiction taking into account (1) the inherent step-in risk within that jurisdiction and (2) the impacts of risk mitigants, for example, reforms already in place. Based on the results of such an assessment, national supervisors should have discretion to opt out of requiring banks to apply the framework where it would be redundant (e.g., in the case of CMBS and RMBS issued by US banks).[4]

Where national supervisors identify residual step-in risk, they should have the option of reducing the level of residual step-in risk by enhancing existing mitigating structures as an alternative to applying the framework. National supervisors may prefer to build upon existing structures, as the process of adding a new car to a railroad that already exists and runs on time can prove more efficient, effective and sustainable than building a new railroad to deliver the same car.

While step-in risk is a risk that banks and their supervisors need to identify and manage, we believe that national supervisors should retain the ability to determine the most effective way to achieve an optimal outcome, from the perspectives of the national supervisors, banks and other stakeholders. Moreover, any approach to step-in risk should allow for appropriate recognition of the lack of history of step-in risk around CMBS and RMBS in the US and the comprehensive mitigating impacts of existing US standards.

MBA appreciates the opportunity to share its views with you. Please direct any questions about the information in this letter to Bruce Oliver, Associate Vice President for Commercial/Multifamily Policy, at boliver@mba.org.

Sincerely,

David H. Stevens, CMB
President and Chief Executive Officer
Mortgage Bankers Association

[4] Consistent with a flexible approach, the Committee should characterize reporting templates at Annex 1 as models national supervisors might use or adapt. Each supervisor will likely have its own view on which information, presented in which format, would best support its supervisory responsibilities.