October 28, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
2128 Rayburn House Office Building
Washington, DC 20515

Re: Financial Regulatory Reform and Commercial Real Estate Finance

Dear Chairman Frank and Ranking Member Bachus:

As a broad and diverse group representing all market participants in the commercial real estate sector, we applaud you for recognizing the need to restore confidence and to provide greater transparency in our financial markets through regulatory reform. In the coming weeks, as the Committee explores financial regulatory reform proposals, we urge you to consider the enormous challenges facing commercial real estate and the uniqueness of the markets that finance this $6 trillion sector by customizing reforms accordingly in order to support, rather than impede, our market's recovery.

Over the last two decades, commercial real estate has helped fuel our nation's economic growth while providing jobs and services to local communities, as well as housing for millions of Americans in multi-family dwellings. Unfortunately, the recent turmoil in our economy and financial markets has created a serious lack of liquidity and virtually no credit availability in the commercial mortgage market. For instance, the commercial mortgage-backed securities (CMBS) market – which represented more than $230 billion of financing in 2007 (or nearly half of all commercial lending) – provided less than $13 billion in loan issuance in 2008, despite strong credit performance and tremendous demand from borrowers. Most alarming, there has been no private label CMBS issuance to date this year.

This lack of capacity – coupled with the downturn in the overall economy, including high unemployment, low consumer confidence and falling property values – threatens our economic recovery and is severely compounded by the fact that more than $1 trillion in commercial mortgage loan maturities are coming due in the next several years. In fact, the inability to secure financing could easily result in increased loan defaults, or the forced sale of properties at greatly depressed prices, creating a ripple effect of financial losses and more job layoffs.

We have welcomed efforts to promote liquidity and facilitate private lending, such as the Term Asset-Backed Securities Lending Facility (TALF) and Public Private Investment Program (PPIP). We also recognize and appreciate that policymakers have approached regulatory reforms with a sense of urgency to address the lack of certainty and confidence in our financial markets that threatens our entire financial system and recovery in the commercial real estate market. In this regard, it is crucial that reforms are sufficiently tailored to account for the essential differences of inherently different markets, such as commercial real estate, so that reforms do not undermine these recovery efforts.

Specifically, we urge policymakers to ensure that reforms aimed at the securitized credit markets are customized and applied appropriately in order to support the existing financing mechanisms in commercial real estate finance that work well, create liquidity, and promote sound practices and transparency. It is most critical, for example, that any risk retention requirement be structured carefully to maintain and strengthen the safeguards that exist in the CMBS market by explicitly recognizing the important role of third party investors who retain a first-loss position and – during the pre-issuance phase – conduct extensive due diligence and re-underwrite the loans in the pool (in addition to the originators and issuers that would be encompassed by the retention requirements under the Administration's initial proposal). In this regard, we highlight a recent recommendation by the International Monetary Fund (IMF) that "[p]roposals for retention requirements should not be imposed uniformly across the board, but tailored to the type of securitization and underlying assets to ensure that those forms of securitization that already benefit from skin in the game and operate well are not weakened."

Ultimately, there is no question that our nation's regulatory reform structure needs to be updated to meet current and future challenges and to provide investors and consumers with regulatory certainty and transparency. At the same time, tailoring the final regulatory reform proposals to avoid a "one size fits all" approach to the securitized credit markets for commercial real estate will support efforts to restore lending – and the capital markets investing that fuels such lending – which is critical to our overall recovery.

We appreciate your consideration and stand ready to work with you on these issues.

Sincerely,

American Land Title Association
American Resort Development Association
Associated General Contractors of America
Building Owners and Managers Association International
CCIM Institute
Commercial Mortgage Securities Association
Institute of Real Estate Management
International Council of Shopping Centers
NAIOP, Commercial Real Estate Development Association
National Association of REALTORS®
National Association of Real Estate Investment Managers

cc: Subcommittee Chairman Paul E. Kanjorski
Subcommittee Ranking Member Scott Garrett