



CRE Finance Council responds to FDIC "safe harbor" rule

July 27, 2010 - Financial Digest

According to the CRE Finance Council, it recently filed a comment letter with the FDIC in response to its proposed "safe harbor" rule, which addresses the treatment of assets during the potential insolvency of an FDIC-backed institution. The FDIC rule is being developed as a result of new accounting rules (FAS 166 and 167) in order to ensure that assets transferred by an "insured depository institution" into a securitization pool are protected from any insolvency proceedings of that institution.

In the comment letter, the CRE Finance Council urges the FDIC to consider carefully the negative impact that piecemeal reforms would have on providing certainty and confidence for market participants, particularly investors, and supporting a commercial real estate recovery.

"The CRE Finance Council appreciates the opportunity to comment on this important issue, and recognizes that the FDIC's goals and ours are well aligned, with the unifying purpose of ensuring that capital continues to flow into the commercial real estate markets in an efficient and responsible manner," said Lisa Pendergast, president, CRE Finance Council, and managing director of CMBS Strategies and risk at Jefferies & Co. "Regulatory reform, as it relates to securitization, must be crafted to support and encourage the recovery of the commercial real estate market and the economy as a whole," Pendergast said. "The FDIC must be mindful to ensure that investors have confidence in the protections afforded by the safe-harbor framework and that the framework reflects congressional intent on securitization reform, particularly as it relates to joint rulemaking."

The Council also urges the FDIC-and financial regulators more broadly-to work within the new and coordinated framework directed by Congress in H.R. 4173, the Wall Street Reform and Consumer Protection Act (or "Dodd-Frank"), which requires regulators to promulgate joint rules by "asset class" to ensure that securitization reforms are coordinated and customized.

As stated in the comment letter, "[t]ailoring regulation is especially important in addressing assets such as commercial mortgage-backed securities, which have innate characteristics that minimize the risky securitization practices that policymakers wish to address, but could suffer detrimental effects to liquidity and credit availability if reform mandates do not take these unique characteristics into account."

The CRE Finance Council's membership is united in the view that the alignment of the interests of lenders, issuers and investors in the securitization process is essential. The Council has long been an advocate within the industry for enhanced transparency and sound practices, and the association will continue to work with market participants and policymakers to build on the unparalleled level of disclosure and other safeguards that exist in the CMBS market.

According to the notice of proposed rulemaking, the new FDIC safe harbor rules will go into effect on Sept. 30, 2010. The comment period ends July 1, 2010.