From: Nick Nicholas

Proposal: 1411 (7100-AD70) - Credit Risk Retention

Subject: Credit Risk Retention - Reg RR

Comments:

This message pertains to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), and specifically the Credit Risk Retention proposed rule, and its Qualified Residential Mortgage (QRM) exemption, and the Ability to Repay proposed rule, and its Qualified Mortgage (QM) safe harbor, both of which are of enormous significance to our industry.

1. I urge you to adopt a safe harbor (as opposed to a rebuttable presumption) that the ability to repay standard has been met. The safe harbor must set forth clear and concise standards with a bright line test so that lenders can readily determine and prove their compliance with the standards. For example, a legal safe harbor in which the ability to repay requirement has been met and would define a QM as a mortgage that: (1) does not include negative amortization, interest-only payments, or balloon payments (except as permitted for balloon payment qualified mortgages) or has a loan term exceeding 30 years; (2) has total points and fees not exceeding three percent of the total loan amount ; and (3) where underwriting (a) is based on the maximum interest rate in the first five years, (b) uses a payment schedule that fully amortizes the loan over the loan term, and (c) takes into account any mortgage-related obligations. The income or assets of the borrower must also be considered
and verified.

2. Many in the industry fear that consumers will not be able to obtain loans of less than $75,000 due to the points and fees limits, and this likely will adversely impact minorities. A higher threshold loan amount will better serve consumers. Many suggest that $150,000 would be more appropriate.

3. The proposed rule adversely impacts affiliated business arrangements which Congress deemed permissible in RESPA. Many fees charged by such third party settlement service providers are prescribed by state law. Therefore, there is no reason to treat affiliated third party settlement service providers differently than those which are not affiliated with the lender.

4. The limit on "points and fees" must be revised to exclude employee compensation to avoid such compensation being counted twice. The "points and fees" calculation should not include double counting of any item.

5. The proposed rule leads to fewer safe and sound product options to consumers due to treatment of private mortgage insurance premiums which likely will increase the dominance of government loans in certain markets.

6. The vast quantity of new regulations is stressing lenders and making it difficult to serve consumers. Many banks and smaller lenders are leaving the market which adversely impacts consumers by restricting access to credit and making loans more expensive for those who can obtain them. I oppose QRM. While estimates vary, the clear result of any risk retention rule will be that loans that are not QRMs will be costlier or not available at all. Regrettably, the regulators have proposed a QRM definition that includes a high down payment2 and uncommonly low loan-to-value (LTV)3 and debt-to-income (DTI) ratios4 that

would make most loans subject to risk retention, and therefore costlier and in some cases unavailable. These effects will be worse for minority and moderate income borrowers who can least afford increased credit costs. Like Congress, we do not believe risk retention is necessary where loans are determined to be QRM. Moreover, we believe the proposal for a narrow QRM is inconsistent with what Congress intended and would drastically limit affordable mortgage financing options to moderate income families, first-time borrowers, minorities, and many others. The government's own data shows that the proposed regulations would hurt consumers by limiting access to credit for well-qualified borrowers.5 Even high quality loans would not meet the proposed QRM requirements. Though 2009 was a year of highly conservative underwriting standards, only 30 percent of loans purchased by Fannie Mae and Freddie Mac would have met the proposed requirements. In effect, the QRM tightens credit in an already constricted lending environment. Data also shows it could take moderate income borrowers, depending on where they live, up to 18 years to save for a 20 percent down payment for a moderately priced home.6 The proposed • alternative• of ten percent down payment is not much better. It will take renters much longer to save. Borrowers also must pay closing costs, which typically add another $5,000 to the amount a borrower must save. At the same time, borrowers who have faithfully made their mortgage payments but have little equity and may live in areas of significant home declines will find it difficult if not impossible to refinance into a QRM loan because of the proposal's 75 percent LTV requirement for refinancing.

7. I think that another proposed rule be published for comment before final adoption and implementation