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charles.bachtell@guaranteedrate.com
3940 North Ravenswood, Chicago, IL 60613
ph: 773/290-0426
fx: 773/516-6766

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
Docket Number OCC-2011-0002

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn.: Elizabeth M. Murphy, Secretary
File Number S7-14-11

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn.: Jennifer J. Johnson, Secretary
Docket No. R-1411

Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attn.: Alfred M. Pollard, General Counsel
RIN 2590-AA43

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn.: Comments, Robert E. Feldman
Executive Secretary
RIN 3064-AD74

Department of Housing and Urban Development
Regulations Division
Office of General Counsel
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
Docket Number FR-5504-P-01

Re: Interagency Proposed Rule of Credit Risk Retention

Dear Madams and Sirs:

Guaranteed Rate truly appreciates the opportunity to submit this comment letter related to the above-referenced proposed risk retention regulation (the "Rule") as described in Section 941 of the Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act" or "Act"). Guaranteed Rate is an independent mortgage lender that primarily engages in correspondent lending activities. We are licensed in 46 states and while based out of Chicago, Illinois, we have approximately 80 offices around the country. In 2010, we originated approximately $6.9B in overall loan volume. We are submitting comments that we believe will be helpful additions to the rule-making parties during this rule-making process. The focus of this commentary will be on the provisions relating to risk retention and the definition of a Qualified Residential Mortgage ("QRM") for single family residential mortgages. While the impact that this definition will have on the mortgage and housing industries, and the economy as a whole, cannot be over-emphasized, we have done our best to keep this commentary brief and concise.

## I. Introduction

Guaranteed Rate agrees that measures should be taken to prevent a repeat of the "housing finance crisis" that we've experienced over the past several years. That said, it is critically important that we don't over-regulate to the extent of making an economic recovery impossible. The idea behind risk retention and the

QRM was to provide safety, security and a reduced default risk for borrowers as well as safety, security and reduced default risk for investors in mortgage-backed securities. The QRM must be defined in a way that mitigates systemic risk without hurting the ability of families to buy a home, or to refinance to a loan with better terms—a balance must be reached. It is with this in mind that we present our comments/analysis of the proposed Rule.

## II. Congressional Intent

The Rule as proposed is contradictory to the Congressional intent. Most important to this rule-making exercise is to determine the Congressional intent behind risk retention and its exception, the QRM—as I understand the rule making process, the regulator is charged with creating a rule that effectuates the intent of Congress. The simplest way to accomplish this may be to take a look at the May 26th letter put together by Senators Landrieu, Hagan and Isakson—the original drafters of the QRM bill upon which the QRM section of the Dodd-Frank Act was modeled.

The May 26th letter, in relevant part, states:

> "[w]e the undersigned intended to create a broad exemption from risk retention for historically safe mortgage products when we included the Qualified Residential Mortgage (QRM) exemption in the Dodd-Frank Wall Street Reform and Consumer Protection Act... The proposed regulation goes beyond the intent and language of the statute by imposing unnecessarily tight down payment restrictions...The proposed regulation also establishes overly narrow debt to income guidelines that will preclude capable, creditworthy homebuyers from access to affordable housing finance."
>
> "Congress included the QRM to exempt safe, well-underwritten mortgages that have stood the test of time from the risk retention requirement. We urge you to follow our intent as you modify the proposed risk retention rule."

This letter was endorsed by 39 U.S. Senators. A similar letter that circulated the House was signed by 201 Representatives. Former FDIC Chairman Sheila Bair has stated that the QRM was supposed to represent a "narrow slice" of the mortgage market—it's clear that the elected officials that drafted the QRM exception feel differently.

The point that the Senators and Representatives were making here is that the risky underwriting features (that have not been available for a couple of years now) were responsible for the issues; the defaults and unacceptable credit risks were not caused by lower down payments and debt-to-income ("DTI") ratios exceeding 36%. Most of the issues that caused this mess stemmed from loan guidelines in effect from 2003 to 2007. Over the past two years the mortgage industry, and the related securities markets, have undergone a correction that has resulted in some of the cleanest, highest quality mortgage loans being originated in generations—this while still offering the low down payment loans and loans with debt-to-income ratios in excess of 36%. Branding these borrowers as "non-QRM", subjecting them to higher costs/fees and interest rates, is unwarranted and is in opposition to the intent of Congress.

## III. The QRM Rule as Proposed

There are two main data-supported factors of the QRM that must be considered: (1) the QRM definition, as drafted, will prevent the vast majority of borrowers today from obtaining a QRM loan; and (2) non-QRM loans will have a higher cost of origination (and higher costs/fees and interest rates to borrowers) than QRM loans. To state it another way, this narrowly drafted Rule will create a scenario where the best rates and lowest fees are only available to a few borrowers while subjecting most borrowers to higher costs/fees and interest rates.

There are several issues with the Rule as drafted, including, but not limited to, the following:

1. Equity Requirements (Loan to Value: LTV)—the Rule requires that a purchaser put down a 20% down payment as well as pay for all of their own closing costs. The Rule also requires that borrowers wanting to refinance currently existing loans have a minimum of 25% equity in the property or 30% equity if the homeowner wants to do a "cash-out" refinance.
    - Congress did not intend for these overly-restrictive limitations to be part of the QRM definition. Per the Act, the definition of QRM is supposed to take into consideration "private mortgage insurance", which is only obtained in the event that the equity of the borrower in the property is less than 20%.
    - The vast majority of home purchasers put down less than 20% at the time of purchase. Based on figures from often cited industry and national economic sources, it would take the average family between 14 and 18 years to save the 20% down payment on an average priced family home—these estimates include the assumption that 100% of family savings are utilized to make the down payment. Still significant, and with the same unrealistic assumption, it would take the average family between 9 and 11 years to save for a 10% down payment. Such requirement would be a nearly insurmountable barrier to most first-time and minority homebuyers.
    - Requiring that current homeowners have 25% equity in their property to obtain a "rate-term" refinance (not taking out any equity) does not make sense. The most likely purpose for a rate-term refinance is to obtain better loan terms, i.e. reduce the borrower's monthly expenses. This should be encouraged, especially if the borrower can qualify for a refinance under today's stricter underwriting guidelines. Due to the fact that real estate values across the country have plummeted in recent years, along with the overall economy, a significant portion of homeowners have less than 25% equity in their property (even if they put down more than 25% when they purchased the property). The truth is, we should be doing everything that we can to put homeowners in loans with better terms than they currently have.
    - Requiring the borrower to pay their own closing costs will have a limited impact on default risk while, at the same time, making the barrier to purchasing a home that much greater.

2. Debt-to-Income Ratios—the Rule caps a borrower's DTI ratios at 28% and 36%.
    - While Congress did include DTI as a factor to be considered in the definition of QRM, Congress did not intend for there to be an unduly restrictive cap in place. As cited above, both the Senate and House letters voicing objection to the proposed Rule cited this overly burdensome DTI cap as a matter of concern and, therefore, outside of their original intended QRM definition.
    - No single credit-risk factor associated with the underwriting of loans should have a hard-line cap—there are too many factors involved with underwriting good loans to allow for such limitations.
    - As we'll discuss below, the data clearly shows that product type and loan terms are significantly better factors for eliminating default risk than implementing DTI caps. If you retroactively apply these DTI caps to loans that Fannie Mae and Freddie Mac have purchased over the past few years, the caps would have eliminated considerably more

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good loans from being originated than they would have prevented loans that have defaulted from being originated.

3. Credit History—the Rule stipulates that the borrower must not be 30-days or more past due on any debt obligation; must not have been 60-days or more past due on any obligation in the last 24-months; and within the last 36-months the borrower has not been involved in a bankruptcy proceeding, had a property repossessed.
    - As drafted, this provision could improperly penalize qualified borrowers for minor, and innocent, credit delinquencies.
    - While we clearly support having the borrower's credit history as a consideration during the loan origination/underwriting process, we cannot support the inclusion of any hard-lined restrictions. The underwriting process has to have some fluidity in order to make sure that qualified borrowers obtain loans.

4. Points and Fees—the Rule stipulates that the total amount of points and fees payable by the borrower may not exceed three percent of the total loan amount.
    - This provision is drafted more narrowly than the similar provision included in the Federal Reserve's proposed Ability to Repay/QM rule. This Rule does not include the proposed QM's exclusion for "bona fide discount points" of the adjustment for smaller loan amounts.
    - Furthermore, the Rule as proposed does not exclude fees for bona fide third-parties if the third-party is an affiliate of the lender. This must be remedied—the third-party affiliate is acting as a completely separate entity and is often providing a service to the borrower more cost effectively than other competitors. There is no compelling purpose for excluding affiliates from the bona fide third-party exclusion to the points/fee cap.
    - Again, while we support some sort of limitation on the total number of points that can be charged to a borrower, a hard-lined restriction of three points could unfairly prejudice qualified borrowers, especially on lower loan amounts.

5. Loan Servicing Standards—the Rule requires that mortgage documents for all QRMs include provisions that require mortgage lenders to commit to servicing standards with certain mitigation measures included.
    - Without question, this provision falls outside of Congress' intent. Nowhere in the legislative language is there any language indicating that servicing issues were to be addressed through the QRM definition.
    - This rule is not the appropriate forum for these additional obligations related to the servicing of loans and loss mitigation techniques. It is my understanding that there will soon be a Federal interagency proposal specifically related to servicing standards and, therefore, the forthcoming proposal would be the appropriate place for such a concept.

6. Non-QRM Loans: Risk Retention—the Rule requires securitizers to retain up to 5% of the non-QRM loan amounts. Furthermore, in the event that any one originator sells the securitizer more than 20% of the loans in a non-QRM security, the securitizer may share a portion of the risk retention with the originator.
    - An originator that plays no role in drafting the loan guidelines should not be subjected to any potential risk retention—the securitizer that authored the non-QRM guideline, knowing that risk retention would be required, should be responsible for the risk retention.

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- Originators have risk retention on every loan that they originate—they represent and warrant that the loan was originated pursuant to the loan guidelines that are published by the investor/securitizer. If there is any deviation from those loan guidelines, the originator could be responsible for all losses associated with that loan.

## IV. Application of the proposed Rule to Guaranteed Rate data

To better understand the impact of the Rule as drafted, we conducted our own FHFA-style analysis of our loan production originated in 2010—clearly one of the highest quality years for loan originations in generations. One-by-one we applied the proposed overlays to our pipeline of loans, totaling just shy of 40,000 loans.

First we applied the "owner occupied" requirement, then we took out any non-1st lien position loans, next we eliminated any purchase-loans with subordinated debt, next (and most importantly) we eliminated any loans with "risky" features (such as interest-only payments, negative amortization, balloon payments, etc.)—at this point our ratio of QRM to Non-QRM was 89% QRM and 11% Non-QRM. Then we applied the DTI overlay—it alone eliminated 55% of our remaining loans. Lastly, we applied the LTV restrictions—that overlay eliminated 52% of those remaining loans. After applying the DTI and LTV overlays, our new QRM to Non-QRM ration was **25% QRM and 75% Non-QRM**.

For our minority borrowers the results were worse—only 8.4% of African American loans would be QRM compliant and 10.6% for Hispanic borrowers. The impact of this Non-QRM designation goes beyond receiving higher costs/fees and interest rates—based on the current White House's position that the government (FHA/VA) is playing too large of a role in the mortgage market, in the coming years we are going to see a concerted effort to limit the amount of FHA/VA loans that are originated, or pricing measures/underwriting overlays will be put in place to ensure less borrowers qualify for FHA/VA loans. If borrowers cannot qualify for QRM loans and, in the alternative, cannot receive FHA/VA loans, you are talking about middle/low income families and the majority of minority borrowers being disproportionately impacted by the definition of QRM and priced out of the borrowing population.

There are currently several theories circulating as to what the actual increased cost will be between non-QRM and QRM loans—theories range from a "nominal" amount to 3-5% in interest rate. One thing is for sure, there will be a cost.

## V. Recommendations

1. Equity Requirements—**Eliminate the mandatory down payment and LTV thresholds as well as the requirement that borrowers have to pay their own closing costs.**
    - Hard-wiring a specific LTV requirement is overreaching and unnecessary—Data provided by the FHFA clearly showed that when the proposed LTV requirements were applied retroactively to loans originated over the past few years, significantly more qualified borrowers/performing loans were eliminated than were loans that went into default.

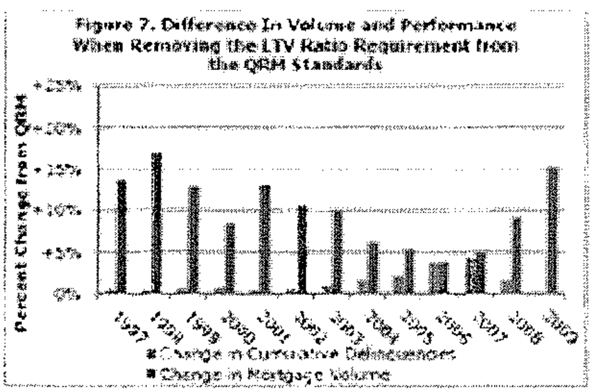


Figure 7. Difference In Volume and Performance When Removing the LTV Ratio Requirement from the QRM Standards

2. Debt-to-income requirements—**Eliminate the hard-wired DTI ratios.**
    - Lenders should be considering and verifying the borrower's income, assets and obligations—there needs to be room for considering compensating factors in a cumulative manner; without hard-line caps. Again, FHFA data clearly showed that when these DTI requirements were applied retroactively, significantly more quality/performing loans were eliminated than loans that had defaulted.

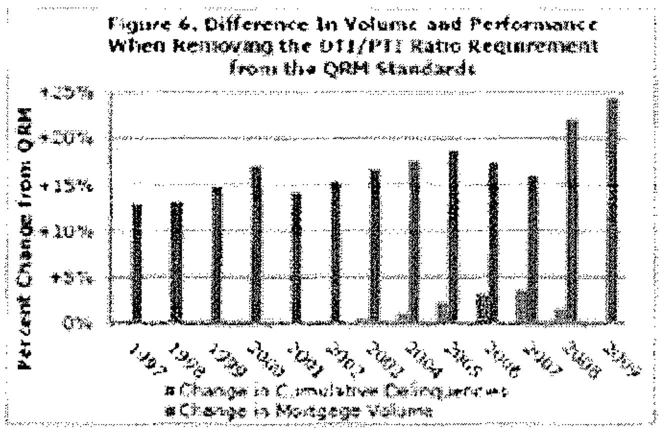


Figure 6. Difference In Volume and Performance When Removing the DTI/PTI Ratio Requirement from the QRM Standards

3. Credit history—**Eliminate the hard-wired eliminating events related to a borrower's credit history.**
    - The definition related to credit history should be identical to the requirements set forth in the Ability to Repay standard—a definition that allows underwriters the ability to review many facets of a borrower to determine credit worthiness, based on widely accepted national standards.

4. Points and Fees Cap—**Restructure the points and fees cap to match that set forth in the Ability to Repay standard.** It should include the exception for "2 bona fide discount points" and the bona fide 3rd-party exception must be extended to include affiliates of the lender/originator.

5. Loan Servicing Standards—**Eliminate this provision from the Rule**. Their inclusion is not supported in the Congressional intent.

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6. Risk Retention (Non-QRM loans)—**Eliminate the provision allowing the securitizer to put the risk retention back on the originator.** Such provision would allow a securitizer to effectively avoid risk retention entirely, if it so chose.

## VI. Conclusion

The mortgage loans originated in the last couple of years are of unsurpassed quality and performance. At the same time, the housing market, finance markets and the general U.S. economy are hanging on by a thread—implementing a rule that would subject the majority of borrowers to higher costs/fees and interest rates was not the intent of Congress when it passed the Dodd-Frank Act and could be catastrophic to our economic recovery.

Thank you for allowing us this opportunity to share our comments/concerns with regard to the Rule. Based on the significance of the Rule, and its potential impact to the nation's economy as a whole, we request that a modified proposed Rule be issued after evaluating all of the commentaries submitted and an additional comment period be provided prior to the issuing of any final rule.

Truly,

Guaranteed Rate, Inc.

By: Charles I. Bachtell
***General Counsel – Guaranteed Rate, Inc.***