



League of Southeastern  
Credit Unions & Affiliates

October 30, 2013

Mr. Robert deV. Frierson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street & Constitution Avenue NW  
Washington D.C. 20551

Re: Interagency Credit Risk Retention Proposal

Dear Sirs and Madams:

The League of Southeastern Credit Unions and Affiliates appreciate the opportunity to submit our views on the proposed rule on credit risk retention which was issued jointly by the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development. By way of background, LSCU is one of the largest credit union advocacy organizations in the country for state and federal credit unions. Our organization currently serves more than 285 credit unions with more than 6 million members located throughout Alabama and Florida.

LSCU Supports Proposal with Important Revisions Incorporated

LSCU supports a free and robust marketplace with equal opportunity for financial institutions to compete for available borrowers based on products and the best service possible. We also support strong internal controls and supervisory oversight without which those in the market will suffer from inefficiencies and skewed competition. We view the application of these characteristics in an open marketplace as critical to our mission of serving the needs and interests of applicants, financial institutions, borrowers, and investors in a positive manner.

We are generally pleased with the proposed QRM definition. While it is identical to the Consumer Financial Protection Bureau's (CFPB) qualified mortgage (QM) definition, it is superior to the original credit risk retention proposal that was issued back in 2011. In that version we were not pleased to see proposals that included a very restrictive 20% down payment requirement and both front-end and back-

end debt-to-income (DTI) ratio requirements. We applaud the decision to remove these very negative requirements from this offering.

While we are pleased these impediments have been removed, we remain concerned that the QM/QRM may possibly become the only type mortgage permitted or that is accepted on the secondary market. However, without some alternative for creditors under this rule, it is likely that this could occur and the impact on the industry will be chilling.

#### Proposed Scope of QRM

We agree with the proposal's definition of "*Residential Mortgage*" and that it should track that of the CFPB's Regulation Z in as much as a residential mortgage would mean a consumer credit transaction that is secured by a dwelling (including any real property attached to a dwelling) and any transaction that is exempt from the definition of covered transaction under Regulation Z. Under the proposal, a residential mortgage would include home equity lines of credit, reverse mortgages, mortgages secured by timeshares, and temporary loans.

While we agree that the proposal's definition we continue to be concerned that non-QM loans will suffer as a result. We urge the agencies to work to ensure that institutions will be capable of successfully originated non-QM loans and then selling them. Another concern we have about this proposal is the potential it may have on otherwise capable borrowers with regard to DTI ratio limitation. Potential borrowers with a DTI ratio of greater than 43%, who can nonetheless afford to repay their mortgage loan in a timely manner, will be excluded from the mortgage loan market and unable to act on their desire to become homeowners. It is our understanding that the Director of CFPB supports the continuation of non-QM credit opportunities and we join the Director in this belief.

One approach that would provide flexibility for creditors to continue originating non-QM/QRM loans would be to allow certain loans to qualify for a lower than 5% credit risk retention requirement. For example, mortgage loans that reflect a borrower's somewhat higher DTI levels, such as up to 50%, that are originated by creditors with low default and delinquency rates, should be allowed to qualify for a credit risk retention level that is more than zero, the level for QM/QRMs, but less than 5%, such as 1%. The loans should be allowed to be included in QM/QRM pools and securitized in separate non-QM/QRM pools.

We are also concerned about fair lending issues that may occur and more specifically, disparate impact issues. The NCUA and other federal agencies issued guidance in response to questions about fair lending risks associated with QM/QRMs. Credit unions have asked for clarity regarding whether the disparate impact doctrine of the ECOA and Regulation B, allows them to originate only Qualified Mortgages. For the reasons described in the statement, the agencies stated they "do not anticipate that a creditor's decision to offer only Qualified Mortgages or Qualified Residential Mortgages would, absent other factors, increase a credit union or other supervised institution's fair lending risk." We are also concerned about disparate impact issues that appear inevitable because lenders are incentivized under the rule to generate only QM/QRM loans. We believe the statement on disparate impact that the agencies issued jointly is genuine and is certainly well intentioned, but it is not practical to believe it will

provide any protection if a lender is challenged in court by an aggrieved consumer who believes a mortgage minus the DTI or other requirements should have been offered.

Ensuring the opportunity is available to sell certain non-QM/QRM loans that meet criteria will help guarantee that creditors will have a market to sell such loans without being subjected to the burden of the full 5% risk retention requirement. More important, it will mean that creditworthy borrowers that do not precisely fit the QM/QRM mold can still finance the purchase of a home on reasonable terms.

Previously we supported and continue to support expanding the types of loans eligible as QRMs. We appreciate efforts to respond to the restrictive scope of QRMs present in the 2011 proposal. In that proposal a QRM was limited to a closed-end, first-lien mortgage used to purchase or refinance a one-to-four family property, at least one of which is the borrower's principal dwelling. We consider the expansion of QRMs will benefit both creditors and borrowers, either of which might otherwise be negatively impacted by an unnecessarily narrow definition.

However, while the QM definition is used as a basis for the QRM proposal, the current proposal expands the types of loans eligible as a QRM to include a closed-end loan secured by any dwelling (e.g., home purchase, refinances, home equity loans, and second or vacation homes) and not just principal dwellings. Additionally, subordinate liens would be eligible to qualify as a QRM, as long as they also meet the definition of QM. While we understand the reasoning behind adopting an "any dwelling is now eligible" approach to simplifying the issue, we question whether it is beneficial to do so.

To promote and facilitate consistency and uniformity between the definitions of QM and QRM, we urge the agencies to work to address our concerns with the proposal. We also urge the agencies to monitor the effect on those charged with adhering to the requirements of the proposal. In the event that the rules adopted result in reduced access or opportunity to mortgage credit, we urge the agencies to initiate steps to update the QRM rule as necessary to preserve such benefits and opportunities.

#### QM-Plus: Alternative to QRM

Although the agencies believe that the proposed approach of aligning QRM with QM is soundly based, they seek input on an alternative that was considered, but ultimately not selected as the preferred approach. The alternative, referred to as QM-Plus, would take the QM criteria as a starting point for the QRM definition, and then incorporate four additional standards.

For the reasons stated below, we are opposed to the proposed QM-Plus alternative to QRM and urge the agencies to withdraw it. We believe far fewer loans would qualify as a QRM and be exempt from risk retention under this alternative. That's not an acceptable outcome for credit union lenders.

We specifically oppose the following aspects of QM-Plus, as their adoption would reduce the number of loans eligible for QRM status:

- A QRM would be required to meet the CFPB's core criteria for QM, including the requirements for product type, loan term, points and fees, underwriting, income and debt verification, and DTI. There would be no distinction between loans that fall within the CFPB's "safe harbor"

versus those that fall within the “rebuttable presumption of compliance” for higher-priced loans—either loan would meet this test for QM-Plus purposes. However, loans that are QMs because they meet the CFPB’s provisions for GSE-eligible covered transactions, small creditor exceptions, or balloon loan provisions would not be considered QRMs under QM-Plus.

- QRM treatment would only be available for loans secured by one-to-four family real properties that constitute the principal dwelling of the borrower. Other types of loans eligible for QM status, such as loans secured by boats used as a residence or loans secured by a consumer’s vacation home, would not be eligible QRMs.
- Under the QM-Plus approach, all QRMs would be required to be first-lien mortgages. For purchase QRMs, this would exclude “piggyback” loans, and no other recorded or perfected liens on the property could exist at closing to the knowledge of the originator. For refinance QRMs, junior liens would not be prohibited, but would be included in the LTV calculations described below.

The mortgage originator would need to determine that the borrower is not currently 30 or more days past due on any debt obligation, and the borrower has not been 60 or more days past due on any debt obligations within the preceding 24 months. Further, the borrower must not have, within the preceding 36 months, been a debtor in a bankruptcy proceeding or been subject to a judgment for collection of an unpaid debt, had personal property repossessed, had any one-to-four family property foreclosed upon, or engaged in a short sale or deed in lieu of foreclosure. We believe it would be prohibitively tedious for underwriting purposes and would also serve to reduce the number of loans eligible for QRM status.

The LTV at closing could not exceed 70%; a down payment of 30% would be required. Junior liens would be permitted only for non-purchase QRMs, and would need to be included in the LTV calculation if known to the originator at the time of closing, and if the lien secures a home equity line of credit or similar credit plan, it must be included as if fully drawn. Property value would be determined by an appraisal, but for purchase QRMs, if the contract price at closing for the property was lower than the appraised value, the contract price would be used as the value. We also strongly oppose this aspect of QM-Plus. We believe a 30% down payment requirement is extremely excessive; as such a requirement would exceed even the 2011 QRM proposal. In addition, a 30% down payment requirement would likely have a significant impact on first-time homebuyers by delaying or outright preventing their ability to purchase a home. This aspect of QM-Plus would also mean that fewer loans would be eligible for QRM status.

For the reasons noted, we support the elimination of QM-Plus as a possible alternative to QRM. However, if the agencies pursue the QM-Plus approach, we believe that modifying QM-Plus in a way that addresses each of the concerns listed above is the best approach remaining.

The agencies recognize that the QM-plus approach would cover a significantly smaller portion of the mortgage market and that those securing the market would be required to retain risks for QMs that do not meet the factors described above. We believe the QM-Plus approach would have a negative impact

on many credit unions defined as small creditors under the CFPB's QM rule, and the members of these credit unions. If the agencies choose to pursue QM-Plus, we urge them to modify the standard in a way that alleviates the very real concerns described above. In addition, if the agencies choose to pursue QM-Plus, we strongly urge them to incorporate exemptions that would provide flexibility for federally insured mortgage lenders.

Conclusion

LSCU supports a QRM standard that is aligned with the CFPB's QM, although we continue to question the wisdom of maintaining the borrower's 43% DTI cap requirements for a QM. We strongly urge the agencies to work with mortgage industry leaders and those credit union lenders to help ensure non-QM and non-QRM loans will always be available to borrowers and acceptable to regulators as well as the secondary market.

We are prepared to discuss the issues presented in our submission with the participating agencies if requested. If you have any questions about our comments, please contact me at (205) 437-2165.

Sincerely,



Scott Morris  
Director of Regulatory Advocacy

