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VIA FEDERAL E-RULEMAKING PORTAL

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. 2011R–1411

Elizabeth M. Murphy
Secretary
Securities & Exchange Commission
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Washington, DC 20549-1090
File Number S7-14-11

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RIN 2590-AA43

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Docket No. FR-5504-P-01
Credit Risk Retention

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Attn: Comments
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Docket Number OCC-2011-0002

Re: Credit Risk Retention / Qualified Residential Mortgages

NAMB – The Association of Mortgage Professionals ("NAMB")[1] appreciates this opportunity to comment on the proposed amendments to Regulation Z related to Credit Risk Retention and Qualified Residential Mortgage requirements ("Proposed Rule") under the Dodd-Frank Wall Street Reform & Consumer Protection Act.

While NAMB supports the underlying purpose and intent of the Credit Risk Retention / Qualified Residential Mortgage requirements in the Dodd-Frank Act and the Proposed Rule, NAMB is extremely concerned about the effect that these requirements will have on the availability and affordability of mortgage credit for generations of future borrowers. NAMB is specifically concerned that the Qualified Residential Mortgage ("QRM") will become the industry standard, but will actually slow down mortgage lending and reduce or eliminate access to credit for a countless number of otherwise creditworthy borrowers.

[1] NAMB has been the voice of the mortgage broker industry for nearly forty years. Representing the interests of mortgage professionals and homebuyers nationwide, NAMB is the oldest and largest national trade association representing the mortgage broker industry. NAMB advocates on behalf of more than 70,000 small business mortgage professionals located in all 50 states and the District of Columbia. NAMB also represents the interests of homebuyers, and advocates for public policies that serve mortgage consumers by promoting competition, facilitating homeownership, and ensuring quality service.

Recent legislative and regulatory changes to our industry have already had a profoundly negative impact on the availability and affordability of mortgage credit. Any further unnecessary or unreasonable constraint on borrowers' ability to obtain the financing they need to purchase or refinance their home will continue to perpetuate declining home prices and subvert the progress that is being made in other areas toward an economic recovery.

NAMB respectfully encourages the Agencies, when finalizing the Proposed Rule, to not only weigh the comments received regarding this proposal, but also give careful consideration to the current realities of our mortgage and housing market, and the existing regulations already in place for our industry. Credit remains tight for even the most qualified of borrowers, and those borrowers who are able to obtain credit are finding it more difficult than ever to do so. Recent regulations require significantly more documentation and verification of all borrower information and there are fewer lenders serving communities than in previous years. This is particularly true in smaller communities, communities of color, and low-to-moderate income areas. Additionally, the market has already cleansed itself of virtually all of the toxic mortgage products that were the true underlying cause of our mortgage crisis, so placing unreasonably narrow restrictions on those mortgage products that remain available threatens to further depress our mortgage and housing markets and severely curtail our larger economic recovery.

Although NAMB supports the underlying purpose and intent of the Proposed Rule, we strongly believe that the Agencies should carefully examine the likely adverse effects that this proposal will have, when finalized, on our market and on the very consumers the Dodd-Frank Act was enacted to protect.

I. The Proposed Rule

The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Securities and Exchange Commission, Federal Housing Finance Agency and Department of Housing & Urban Development ("the Agencies") have jointly proposed amendments to Regulation Z to implement the credit risk retention and qualified residential mortgage requirements included in the Dodd-Frank Act. These requirements generally impose an obligation on securitizers of asset-backed securities ("ABS") to retain an economic interest of at least five percent (5%) of the aggregate credit risk of the assets collateralizing such securities, with exceptions made for loans sold to Fannie Mae or Freddie Mac, FHA loans, VA loans, and Qualified Residential Mortgages ("QRM").

The Proposed Rule defines QRM as a mortgage secured by a first lien on a one-to-four family residential property to be purchased or refinanced by an owner making the property his/her principal residence, with a maturity date not more than thirty (30) years from the date of consummation of the loan. Additionally, the Proposed Rule requires a QRM to meet certain underwriting requirements including: (1) the borrower cannot be thirty (30) days past due on any debt obligation and cannot have been sixty (60) or more days past due on any debt obligation in the preceding 24 months; (2) the borrower must not, within the preceding thirty-six (36) months, have been a debtor in a bankruptcy proceeding, had a property repossessed or foreclosed upon, engaged in a short sale or deed-in-lieu of foreclosure, or have been subject to Federal or State judgment for collection of any unpaid debt; (3) the borrower must provide a twenty percent (20%) down payment for a purchase transaction, and private mortgage insurance cannot be used to support the down payment; (4) the mortgage must have maximum front-end and back-end debt-to-income ratios of twenty-eight percent (28%) and thirty-six percent (36%) respectively; (5) the mortgage must have a maximum loan-to-value ratio of eighty percent (80%) in a purchase transaction, seventy-five percent (75%) on a refinance, and seventy percent (70%) in a cash-out refinance situation; (6) the total points and fees paid by the borrower in connection with the mortgage cannot exceed three percent (3%) of the total loan amount; and (7) a QRM cannot have payment terms that allow for interest-only payments or negative amortization, and is prohibited from carrying a balloon payment.

Although both fixed-rate and adjustable-rate mortgages could qualify as QRMs under the Proposed Rule, the Agencies are proposing a limit on the amount by which interest rates may increase for adjustable-rate mortgages.

For a QRM adjustable-rate mortgage, the interest rate increase may not exceed two percent (2%) (200 basis points) in any twelve-month period and six percent (6%) (600 basis points) over the life of the loan.

II. General Risk Retention Requirement

The Dodd-Frank Act imposes an obligation on securitizers of ABS to retain an economic interest of at least five percent (5%) of the aggregate credit risk of the assets collateralizing such securities, with exceptions made for loans sold to Fannie Mae or Freddie Mac, FHA loans, VA loans, and QRMs.

Though estimates vary widely, it is generally accepted that as a result of this risk retention requirement, loans that do not fall into one of the exempted classifications will be significantly more costly for borrowers. Some estimates point to a rate increase of as much as 200-300 basis points (2-3%) for borrowers obtaining non-exempt mortgages. This would present a far less significant issue for consumers and for our industry if it was simply the case that riskier mortgages for both borrowers and investors would be appropriately more costly and more tightly regulated. However, under the Proposed Rule, which establishes the parameters for the likely largest classification of mortgages exempt from the risk retention requirements – QRMs – the lines are so narrowly drawn that the significant majority of all loans made would be subject to risk retention, and therefore costlier in all cases and unavailable in many.

Like many of our industry partners and Congress, which enacted the risk retention requirement in the Dodd-Frank Act, NAMB does not believe that risk retention is necessary or appropriate for QRMs, provided that QRMs are properly defined and such definition would not drastically limit affordable mortgage financing options for consumers.

III. Definition of Qualified Residential Mortgage ("QRM")

NAMB appreciates the efforts made by the Agencies to craft a definition of QRM that will ensure a low risk of borrower default even under adverse economic conditions. However, NAMB is greatly concerned that the Agencies' definition of QRM in the Proposed Rule is unreasonably narrow and is misaligned with the intent of Congress when it included the QRM exemption in the Dodd-Frank Act.

The Dodd-Frank Act directs the Agencies to base their definition of QRM on "underwriting and product features that historical loan performance data indicate result in lower risk of default." The Dodd-Frank Act even provides additional guidance on exactly the types of factors the Agencies should consider when crafting a definition of QRM. These factors include: (1) documentation of income and assets; (2) debt-to-income ratios and residual income standards; (3) product features designed to mitigate payment shock; (4) restrictions on non-traditional features; and (5) mortgage insurance on low down payment loans.

NAMB shares the belief, which has also been expressed by many Members of Congress, that the Proposed Rule goes far beyond the language and intent of the Dodd-Frank Act, by imposing unreasonably high down payment requirements and establishing exceptionally narrow debt-to-income guidelines that will inevitably increase consumer costs and reduce access to the safest and most affordable financing options for even very creditworthy borrowers.

The Proposed Rule's definition of QRM will result in countless borrowers who maintain good credit and desire a safe loan product at the lowest rate available being effectively shut-out of the market for such a product. Only high income borrowers or borrowers with significant equity in their homes will be able to realistically meet the down payment and debt-to-income requirements established for QRMs in the Proposed Rule. All other borrowers will be forced into more expensive "non-qualified" mortgage products or will be driven out of the housing market altogether if lenders elect to discontinue offering mortgages that fall outside of QRM due to the financial risk to the lender associated with such products.

Congress' intent behind QRM was to provide well-qualified borrowers with ready-access to affordable loan products supported by sound underwriting, and to encourage a new injection of private capital into our housing market to help facilitate a swift and stable recovery. NAMB believes that the Proposed Rule should be revised and the definition of QRM should be brought more in-line with the Congressional intent behind the legislation.

Specifically, NAMB believes that a broader definition of QRM, without exceptions or exclusions based on down payment or other overly restrictive qualifying or underwriting criteria, is needed to improve consumer access to credit on reasonable terms and facilitate a healthy market recovery. NAMB believes that the definition of QRM should include any fixed-rate mortgage with a term of ten (10) years or more, which is fully amortized and requires full documentation of the borrower's income and assets. NAMB does not believe it is appropriate to impose debt-to-income or minimum credit criteria on these mortgages, particularly in light of the Congressional intent behind the legislation and the volumes of historical data showing how well these types of loans have generally performed.

IV. Points & Fees Limitation

The Proposed Rule establishes a three percent (3%) limit on points and fees that may be charged on Qualified Mortgages ("QM") under TILA. The Proposed Rule also amends the definition of "points and fees" in Regulation Z to include: (1) certain up-front mortgage insurance premiums in excess of the amount payable under FHA provisions; (2) all compensation paid directly or indirectly by a consumer or creditor to a loan originator including the compensation paid to employees of originators or creditors; and (3) the prepayment penalty on the covered transaction, or on the existing loan if it is refinanced by the same creditor. Points and fees also include compensation paid directly or indirectly by a consumer or creditor to a mortgage originator including lenders and mortgage brokers as well as originator employees. Exempt from the calculation of points and fees is: (1) any bona fide third party charge not retained by the creditor, loan originator or an affiliate of either; and (2) certain bona fide discount points.

While NAMB opposes excessive points and fees that are unfair to borrowers and unnecessarily increase loan costs, we believe the three percent (3%) cap on points and fees in the QM requirements too severely restricts consumers' options for managing closing costs and unreasonably threatens the availability of credit for lower income and lower value areas. NAMB strongly believes that changes must be made to the three percent (3%) limit on points and fees for QMs in order to avoid a complete collapse of the market for smaller mortgage loans.

Although the Proposed Rule allows for adjustments to the three percent (3%) cap on loan amounts below $75,000 and up to five percent (5%) on loan amounts less than $20,000, it is still extremely unlikely that many smaller loans will be made or that any would be classified as QM or be considered affordable. In fact, lenders are indicating reluctance to even go below $150,000 loan amounts because the three percent (3%) limit on points and fees is simply unworkable.

Additionally, NAMB believes that all bona fide third-party fees not retained by the originator and fees paid to affiliated service providers of the originator should be excluded from the points and fees calculation. NAMB also strongly believes that all compensation paid to individual employees of any loan originator be excluded from the points and fees calculation.

V. Exempt QRM from Discretionary TILA Rules & Regulations

NAMB strongly believes that mortgages falling within the definition of QRM should be specifically exempt from the Board's (now the Consumer Financial Protection Bureau's) discretionary regulatory authority under TILA. By exempting QRMs from the risk-retention requirements of the Dodd-Frank Act, Congress recognized the value to consumers in reducing the cost of securitizing these mortgages, thereby providing a market incentive for the wide origination of responsible loans.

NAMB believes this same principal is applicable in the case of rules enacted by the Board under its broad discretionary authority under TILA. Exempting QRMs from onerous discretionary rulemaking and regulations will further incentivize the origination of these responsible loans and will help ensure that these loans are less expensive for borrowers than other products carrying more risky features and less restrictive underwriting standards.

VI. Time for Implementation

The extensive changes contemplated in the Proposed Rule will require a significant investment of time, coupled with substantial human and capital resources, in order for the industry to properly adjust to and implement the new requirements. In consideration of the strain already being put on so many in our industry who are struggling to solve the compliance labyrinth that has resulted from the tidal wave of recent changes to TILA, HOEPA, RESPA and TILA disclosures, FCRA and SAFE Act requirements, and appraisal standards, NAMB respectfully urges the Agencies to refrain from imposing any new mandatory compliance deadlines under the Proposed Rule for a minimum of twenty-four (24) months.

NAMB believes that consumers, financial institutions, investors and the market itself need time to catch-up to the numerous significant changes that have already taken effect within our industry. With more new rules required under the Dodd-Frank Act and additional revisions to the RESPA and TILA disclosures coming, NAMB believes it is imperative to pause and evaluate those changes we have already made, in order to understand which are having a positive impact on consumers and our industry and which are already yielding adverse unintended consequences.

VII. Conclusion

NAMB commends the Agencies for their joint efforts in issuing the Proposed Rule, and we sincerely appreciate this opportunity to share our comments on these issues that are so critical to our members and our industry. Should you have questions or wish to discuss any aspect of these comments further, please contact Mike Anderson, NAMB Vice-President and Government Affairs Chairman at (225) 297-7704 or mikea@essentialmtg.com.

Respectfully submitted,

Michael J. D'Alonzo

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