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August 1, 2011

Ms. Jennifer J. Johnson
Secretary, Board of Governors
Federal Reserve System
20th Street and Constitution Ave., N.W.,
Washington DC 20551

Ms. Johnson,

The pending Credit Risk Retention rule, as published in the Federal Register on April 29, 2011, contains troubling implications for low- and moderate-income communities. Specifically, through the proposed rule's definition of Qualified Residential Mortgage ("QRM"), the federal government appears to be categorizing countless low- and moderate-income families as inherent credit risks and threatens to relegate these families to the status of second-class citizens with respect to credit access.

Although the Neighborhood Assistance of America ("NACA"), a nonprofit corporation dedicated to helping primarily low- and moderate-income families secure housing in traditionally underserved communities, does not participate in the market for asset-backed securities and is thus not directly affected by the proposed rule, NACA represents hundreds of thousands of low- and moderate-income families who will be affected by this rule and thus is compelled to speak up, on behalf of those who cannot.

ABOUT NACA

NACA is the largest HUD-certified counseling organization in the country, responsible for approximately thirty-percent of the total counseling provided by such organizations. NACA offers one of the best homeownership programs in the country for both existing homeowners with an unaffordable mortgage and those potential homebuyers looking to purchase a home.

NACA, working in long-term partnerships with Bank of America and Citigroup, has developed the preeminent mortgage product in the private marketplace for making truly affordable home loans available to primarily low-to-moderate income borrowers and communities – the NACA Purchase Program.

The NACA Purchase Program has many remarkable features. It allows NACA clients to purchase or refinance homes with:

- no down payment,
- no closing costs,
- no fees,
- no requirement for perfect credit,
- and at a below-market, thirty-year fixed interest rate.

All NACA Purchase Program clients receive the same terms, including the below-market, thirty-year fixed interest rate, regardless of their credit score or other factors.

The NACA Purchase Program has achieved remarkable success through a multi-step process in which NACA carefully and comprehensively counsels and advises potential homeowners. First, the potential homeowner attends a four-hour homebuyer's workshop that provides a thorough overview of the home buying process, the NACA Purchase Program, how to become NACA Qualified (*i.e.*, mortgage-ready) and mortgage options. Next, over a series of weeks or months, a client will attend individual counseling sessions that can last up to two hours each. In these sessions, the counselor and the client discuss basic intake information, the type of home the client desires and can afford, the client's history regarding bill payment, outstanding debts, household expenses, rent payment history, assets and other relevant issues. Using this information, a maximum PITI (principal, interest, taxes and insurance) is calculated and approved by NACA underwriters. Then, over a period of time, the client must demonstrate the ability to save the Payment Shock (*i.e.*, the difference between the client's rent and the maximum mortgage payment) to become NACA Qualified. The client is also provided information about various mortgage options, including but not limited to Federal Housing Administration loans, local options and NACA.

Once so Qualified, the client attends a Purchase Workshop, which provides information on identifying properties, the option to use a NACA-approved buyer's real estate broker, submitting and processing a mortgage application and the closing process. The Purchase Workshop also discusses potential home repair issues and the support that NACA provides to make sure that repairs are completed in a prompt and fair manner through NACA's Home and Neighborhood Development Program.

Next, clients begin the process of locating a home to purchase. NACA clients have the option of using a NACA-approved buyer's real estate broker or agent to ensure that the client's interests are protected in the housing search process. Once a client selects a home and negotiates and signs a purchase and sale contract, the client can apply for NACA Credit Access, to access the NACA mortgage product. This involves providing documents and data to a licensed NACA mortgage consultant to demonstrate the client's continuing sound finances. With this satisfied, the client submits an application to NACA for credit approval in conjunction with a mortgage application, which undergoes mortgage processing and underwriting through the NACA program. Once NACA approves credit access, it submits a mortgage application to one of NACA's participating lenders. Upon approval by the bank, the potential new homeowner proceeds to closing with full monitoring and support by NACA personnel.

Under the NACA program, the client also, through special arrangements with NACA's industry partners, can buy-down the applicable interest rate. Under this special program, each point paid by the borrower permanently reduces the interest rate by one-quarter of one percent (0.25%), with the option of reducing the rate as low as virtually zero. This unprecedented feature of the NACA program is a huge benefit to borrowers.

NACA even provides, through its Membership Assistance Program, substantial services to a client subsequent to closing. These include free financial counseling and access to financial assistance if the client misses a mortgage payment due to serious health problems, loss of employment or other issues.

NACA COMMENTS ON THE PROPOSED RULE

Sections __.15(c) and (d) of the proposed rule establish QRMs as an exclusive category of home loan mortgages, a classification limited to only mortgages of "very high credit quality." Proposal at 24,117. Despite its attempt to soften this distinction by declaring that "many prudently underwritten residential mortgage loans will not meet the proposed definition of QRM," the proposal effectively creates a gold standard in the mortgage lending industry. Proposal at 24,118. This new mortgage lending gold standard is drafted in a manner that all but excludes low- and moderate-income families from its definition and in doing so foreshadows a class-based system of credit access that is entirely un-American.

1. Proposed Section __.15(d)(5) Discriminates Against Low- and Moderate-Income Families: Response To Requests For Comment 108, 110 and 115-16.

Proposed Section __.15(d)(5) requires, as a precondition to attaining qualified residential mortgagor status, that a borrower satisfy certain credit history criteria. The proposed rule's reliance on such criteria as determinative of whether a borrower may qualify for the new credit gold standard is inherently flawed because it is based on the assumption that an individual's past performance on a loan is an accurate and fair predictor of that individual's capacity to make timely loan payments in the future. While this type of blunt classification may be statistically appealing and appropriate for private enterprise, or even for the government when acting in its proprietary capacity, the federal government should not be drafting laws that officially classify this broad class of Americans as not creditworthy and thereby depriving low- and moderate-income families of sorely needed opportunities in the U.S. credit market.

The NACA model, as described above, is dedicated to offering low- and moderate-income families, and those who live in low- and moderate-income communities, such opportunities and is a shining example of how very high quality credit loans may be underwritten based almost entirely on a borrower's ability and willingness to pay. To do otherwise is to confine many low- and moderate-income Americans to a repeating cycle of denied opportunities and corresponding failure. If NACA were to follow the proposed rule's guidelines for assessing credit – that is stigmatizing anyone who has been more than sixty days delinquent on a loan during the past two years or has experienced serious financial trouble within the past three years – tens of thousands of NACA members who currently enjoy the American dream of homeownership would have been deprived of this opportunity.

NACA thus respectfully requests that proposed Section __.15(d)(5) be struck from the rule so that the federal government does not put its imprimatur on a class-based system of credit access.

In the alternative, if the rule drafters insist on incorporating credit history into the definition of QRM and decide to retain proposed Section __.15(d)(5), NACA requests that the credit history requirements adopted in the final rule be significantly amended, so that the vast majority of low- and moderate-income families have a chance to obtain a QRM. Such amendments should include, among other items, limiting any borrower credit history analysis to the twelve months immediately preceding the execution of the loan and not considering certain types of delinquent debts which are often incurred in extenuating circumstances but that do not reflect an individual's commitment to homeownership or overall history of paying his or her bills on time – such as uninsured medical bills, personal crises (*e.g.*, a death in the family) or other issues outside of an individual's control.

2. Proposed Sections __.15(d)(9) and (10) Are Arbitrary and Fail To Properly Account For Historically Successful Practices: Response To Requests For Comment 108, 110 and 120-21.

By establishing down payment and loan-to-value ("LTV") ratio prerequisites for obtaining QRM status, proposed Sections __.15(d)(9) and (10) equate the new federal credit gold standard with a twenty-percent down payment, again relying on various statistical analyses to justify this conclusion. This analysis is flawed since NACA and others have demonstrated that no-down-payment loans did not contribute to the mortgage crisis, where the interest rate was a conventional fixed rate, borrowers submitted a full document file and their ability to pay was correctly determined. Even assuming that the cited statistical relationship between down payments and foreclosures is true, a fact which is by no means undisputed, the proposal offers no basis for choosing twenty-percent as the magic down payment, under which all loans are inherently risky and thus unworthy of the QRM designation.

In fact, the proposal admits, albeit buried in a footnote, that "many creditworthy homebuyers seeking to purchase a home will likely not have the 20 percent down payment required for a QRM" but justifies classifying these "creditworthy homebuyers" as outside the gold standard because more meaningful distinctions between creditworthy and non-creditworthy borrowers would be "difficult to incorporate accurately and effectively into a rule without introducing substantial complexity." Proposal at 24,123 n.145.

Although couched in language of objective statistical analysis, the true motivation behind the proposal's adoption of twenty-percent as the minimum down payment for the QRM gold standard appears to be because "lenders have long experience underwriting loans with LTV ratios of 80 percent or less," that is, because this is the way many mortgage loans have been underwritten in the past. Proposal at 24,123. Yet, this premise is also flawed. During the housing boom that followed the Second World War, the Department of Veterans Affairs, and to a lesser extent the Federal Housing Administration, consistently offered zero down payment mortgage programs, programs which were responsible for the economic growth and unprecedented rates of homeownership which propelled this country into the status of world superpower in the 1950s and 1960s. In fact, this tremendous homeownership opportunity excluded most minority homebuyers due to regulations and entrenched racism. Thus, according to the proposed rule's logic, qualified residential mortgages should have no down payment limitation at all, given the historical success of zero down payment loans.

Instead of inserting arbitrary numerical limitations on what types of loans may be classified as federally approved QRMs, the proposed rule should focus on a borrower's ability to repay the loan and, in doing so, craft this new credit gold standard to be as class-neutral and unbiased as possible. NACA thus respectfully requests that proposed Sections __.15(d)(9) and (10) be struck from the rule, or significantly amended.

3. Proposed Section __.15(d)(7) Should Be Amended To Avoid Unintended Consequences: Response To Requests For Comment 108, 110 and 124.

Proposed Section __.15(d)(7) mandates that loans in which fees payable to the borrower exceed three-percent cannot be considered QRMs and, in doing so, mirrors "the restriction on 'points and fees' for QMs [qualified mortgages] contained in Section 129C(b)(2)(A)(vii) of TILA." Proposal at 24,126. While drafting the proposed Credit Risk Retention rule to comport with related portions of Regulation Z concerning qualified mortgages makes sense, both sets of regulations must be drafted as to not accidently stifle highly productive mortgage lending practices in the not-for-profit sector.

For example, the three-percent cap, as currently proposed in Regulation Z and the Credit Risk Retention Rule, could be applied not only to unfair, consumer paid fees, but also to not-for-profit organizations' efforts to help their clients permanently buy-down, on favorable terms, loan interest rates to very low levels. As described above, through special arrangements with its industry partners, NACA clients can permanently lower the interest rate on their mortgage loans by 0.25 percent for each point paid. NACA profits in no manner from any such buy-down and offers it only in an effort to help its clients. The majority of NACA's low- and moderate-income family borrowers scrap together funds from relatives and friends in order to reduce their mortgage payment to as low as possible, to ensure that they stay in their homes long-term. Counting the points paid by NACA clients against the three-percent cap and thereby causing the loans to be stigmatized as inherently risky mortgages will achieve nothing but the discouragement of lending practices proven to be highly beneficial to low- and moderate-income borrowers.

Accordingly, any definition of points and fees, in either the proposed Credit Risk Retention rule or Regulation Z should be drafted to exclude publicly beneficial not-for-profit programs.

4. Section __.15(d)(8) Should Be Amended To Reflect Economic Reality: Response To Requests For Comment 108, 110, 123 and 143.

As currently drafted, Proposed Section __.15(d)(8) establishes rigid debt-to-income ratios as criteria for determining QRM status. Such rigid criteria do not account for the fact that higher-income borrowers are more financially able to absorb fixed expenses, such as food, utilities, etc., that every household must incur. To propose this one-size-fits-all set of criteria ignores basic differences between lower- and higher-income households that should be acknowledged by permitting a range of debt-to-income ratios, such as those proposed in the so-called "Alternative Approach," at page 24,129 of the proposal.

In fact the current government standard has different debt-to-income ratios than stated in the proposed regulations. The Department of Treasury's Making Home Affordable program utilizes thirty-one percent of gross income for the mortgage payment as the benchmark for modifications. The Department of Housing and Urban Development for its purchase programs has historically used a range of twenty-eight percent to thirty-two percent for this ratio.

NACA thus requests that, with respect to debt-to-income ratios, the drafters adopt criteria that are more flexible and more indicative of the economic reality faced by American families.

Thank you for the opportunity to comment.

Sincerely,

Bruce Marks, CEO

CC: Office of the Comptroller of the Currency

Securities Exchange Commission

Federal Housing Finance Agency

Department of Housing and Urban Development

Federal Deposit Insurance Corporation