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August 1, 2011

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Ms. Jennifer J. Johnson, Secretary
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Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
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Mr. Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590–AA43
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Ms. Elizabeth M. Murphy, Secretary
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Regulations Division
Office of General Counsel
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Re: ***Credit Risk Retention Joint Proposed Rule (OCC: Docket No. OCC–2011–0002 and RIN 1557–AD40; FRB: Docket No. Docket No. R–1411 and RIN 7100–AD–70; FDIC: RIN 3064–AD74; FHFA: RIN 2590–AA43; SEC: File No. S7–14–11 and RIN 3235–AK96; HUD: Docket No. FR–5504–P–01 and RIN 2501–AD53)***

Ladies and Gentlemen:

In the interest of our members – the men and women of the U.S. military and their families and on behalf of our bank subsidiary, USAA Federal Savings Bank, United Services Automobile Association (USAA) is pleased to provide our comments with respect to the proposed rule regarding Credit Risk Retention[1] (Proposed Rule) that the Office of the Comptroller of the Currency – Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, U.S. Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development (collectively the Agencies) jointly proposed under Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act).

While USAA supports the exemption of Qualified Residential Mortgages (QRMs) and Qualified Automobile Loans (QALs) from the risk retention requirements, USAA has significant concerns that these definitions are unnecessarily inflexible and narrow. As written, the proposed

[1] Credit Risk Retention, 76 Fed. Reg. 24090 (proposed April 29, 2011).

definitions will limit the availability of mortgages and auto loans to well qualified creditworthy borrowers, having the greatest impact on low and moderate income borrowers, both in the availability of credit and terms of credit if available. Especially important to USAA is the disproportionate impact the QRM definition will have on U.S. military men and women who relocate their families regularly and are forced sell their homes on short notice. The QRM and QAL exemption should be broader and more flexible than the proposed definitions.

Background

USAA is a membership-based association, which together with its family of companies, serves present and former commissioned and noncommissioned officers, enlisted personnel, retired military, and their families. Since USAA's inception in 1922 by a group of U.S. Army officers, we have pursued a mission of facilitating the financial security of our members and their families by providing a full range of highly competitive financial products and services, including personal lines of insurance, retail banking and investment products. Our core values of service, honesty, loyalty and integrity have enabled us to perform consistently and be a source of stability for our members, even in the midst of the unprecedented financial crisis of recent years.

USAA Federal Savings Bank (FSB), an indirect wholly owned subsidiary of USAA, is a federally chartered savings association organized to offer personal retail banking services, including home mortgages and automobile loans to our members, the men and women of the U.S. military and their families.

Qualified Residential Mortgages and Qualified Automobile Loans

This letter will address several of the targeted questions in the Proposed Rule release. Importantly, we seek to illustrate that the proposed definitions of QRM and QAL are far too restrictive and narrow to accomplish the stated policy objective. The conception of such a restrictive rule runs contrary to the social and economic goals intended to be advanced by the Act and will have a disproportionate impact on low and moderate income borrowers and service members.

Question 79: Is our proposal regarding the treatment of the Enterprises (Fannie Mae and Freddie Mac) appropriate?

While we agree that loans sold to the Enterprises should not have separate risk retention requirements, the proposed exemption for loans to the Enterprises is not a cure because it is a temporary exemption while the Enterprises are in receivership. In addition, the Enterprises, as an investor or purchaser in the secondary market, could themselves impose these requirements on whole loan sales, thereby expanding the impact of these exemptions on all mortgages.

Question 106: Is the overall approach taken by the Agencies in defining a QRM appropriate?

We believe the approach taken by the Agencies in defining a QRM is not appropriate. Crafting an appropriate definition of QRM is crucial because we believe lenders will tend to restrict their lending to those borrowers who meet the QRM definition.

First, the proposed definition of a Qualified Mortgage (QM) has yet to be determined. The Act requires both a definition of QM and QRM. The QRM requirements are dependent on those of the QM. In defining QRM, the Agencies should consider the comments received by the Federal Reserve Board on the proposed definition of QM and work together with the Federal Reserve Board to ensure that QRM does not conflict with that of the QM – as expressly prohibited by the Act.

Second, this proposed QRM definition works against the goal of encouraging responsible home ownership. Recovery of the housing sector is consistently cited as a key to the overall economic recovery. Because we believe lenders will tend to restrict lending to borrowers who meet the QRM definition, the QRM definition, as proposed, will further weaken the already frail housing market and hamper the recovery. The housing market is a driver of the job market, economic growth and recovery for numerous related industries (consumer products, construction, etc.). We recognize that past practices may have been too liberal in encouraging home ownership;[2] however, this Proposed Rule has the real chance of strangling home ownership. This Proposed Rule will not only exclude qualifying creditworthy borrowers but also will stifle the recovery of the secondary market, which allows lenders to sell mortgage assets off the balance sheet in return for cash that can in turn be loaned out again. In sum, the restrictive definition of QRM achieves precisely the opposite of the goals set forth by the Administration.[3]

Third, the QRM definition is unnecessarily inflexible. It is an all or nothing test. If a borrower fails one of the criteria, the mortgage will not be a QRM, resulting in higher prices and less favorable terms, forcing many potential homebuyers out of the market altogether. For example, USAA members are frequently sent overseas for deployment on short notice – often 48 hours. Because such deployments allow little time to transfer the oversight of financial obligations to the spouse, service members often send mortgage checks from overseas. Sometimes, although the check is mailed on time, it is delayed in the mail and the mortgage payment is late. The QRM definition, as proposed, provides no flexibility for even one late payment by a creditworthy, financially sound borrower acting in good faith.

This inflexibility will be particularly troublesome for first-time homebuyers, small business owners and homeowners forced to relocate.

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[2] Department of the Treasury and U.S. Department of Housing and Urban Development, *Reforming America's Housing Finance Market, A Report to Congress*, at 2 (February 2011) ("The government must also help ensure that all Americans have access to quality housing that they can afford. This does not mean our goal is for all Americans to be homeowners.").

[3] *Id.* at 1 (continuing to encourage "access to credit for those Americans who want to own their own home, which has helped millions of middle class families build wealth and achieve the American Dream"). *Id.* at 2 ("We should continue to provide targeted and effective support to families with the financial capacity and desire to own a home, but who are underserved by the private market, as well as a range of options for Americans who rent their homes.").

1. First-Time Homebuyers: First-time homebuyers who cannot make a 20% down payment will be driven to loans insured by the Federal Housing Administration (FHA), which permits lower down payments. The Proposed Rule, therefore, will not reduce government support of the mortgage market by facilitating private market involvement, but will merely shift mortgages from the Enterprises to another government program – FHA. This runs contrary to the Administration's plan to make the private sector the dominant provider of mortgage credit.[4]

2. Small Business Owners: Small business owners who do not have a normalized stream of income but have adequate creditworthiness will not be able to meet these standards. This punishment of small business owners runs contrary to the Administration's goals to encourage growth of small businesses.[5]

3. Military and other Career Change Relocation: Particularly important to USAA are military service members who are deployed, change bases or are subject to base closures. These military service members often have to sell their homes on short notice and may be subject to a short sale. The QRM definition unnecessarily punishes any and all borrowers who are forced into a short sale. These are often families who are creditworthy and financially sound, who made prudent purchasing decisions, but must sell quickly as a result of forces beyond their control. The same would hold true for any American forced to relocate quickly because of a job change. Moreover, the short sale limitation fails to take into account the inevitability of declining markets, and unnecessarily punishes homeowners in these markets.

Fourth, the market is likely to consider non-QRM loans to be subprime, therefore creating a new class of prime and subprime borrowers. Every mortgage that is not a QRM will likely be considered subprime or higher risk. True, the QRMs seldom fail, but many of the new class of "subprime" loans will also not fail. According to the Supplementary Information to the Proposed Rule, the Agencies "recognize that many prudently underwritten residential mortgage loans will not meet the proposed definition of a QRM."[6] We agree, and we believe that the definition therefore goes far beyond what the authors of the Act intended – to create an exemption from the risk retention requirement for prudently underwritten residential mortgage loans.[7]

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[4] *Id.* at 2.

[5] Jesse Lee, *President Obama Signs Small Business Jobs Act*, The White House Blog (September 27, 2010) http://www.whitehouse.gov/blog/2010/09/27/president-obama-signs-small-business-jobs-act-learn-whats-it ("[S]mall businesses produce most of the new jobs in this country. They are the anchors of our Main Streets. They are part of the promise of America – the idea that if you've got a dream and you're willing to work hard, you can succeed.").

[6] Credit Risk Retention, 76 Fed. Reg. at 24118.

[7] In remarks delivered on July 10, 2011 at the National Press Club, Rep. Barney Frank conceded that the 20% requirement for a QRM is "too high," and he supported decreasing the down payment requirement for those safe loans to as low as 4% to 5%. *Barney Frank Commends, Defends First Anniversary Of Reform Law*, MortgageOrb, (July 11, 2011), http://www.mortgageorb.com/e107_plugins/content/content.php?content.9134. Alan Zibel, *Rep Frank: Risk Retention Exemption Should Cover More Loans*, Nasdaq (July 11, 2011), http://www.nasdaq.com/aspx/stock-market-news-story.aspx?storyid=201107111210dowjonesdjonline000239&title=update-rep-frank-risk-retention-exemption-should-cover-more-loans.

Finally, the QRM definition inappropriately stifles market innovation. The rigidity of the QRM definition does not take into account product innovation. Every time lenders develop new products that would benefit consumers and not present undue market risk, lenders will have to lobby for changes in regulations to allow for such products. This not only creates market lag and additional work for regulatory bodies, but creates higher costs and a disincentive to innovation. All of the above reasons, taken together, have the overarching effect of keeping Americans from buying homes.

Question 108: What impact, if any, might the proposed QRM standard have on pricing, terms and availability of non-QRM residential mortgages, including to low and moderate income borrowers?

Loans that are not sold to an Enterprise (that is, loans that are not government-insured) and do not fit the QRM definition will be priced higher to account for the additional costs of making the loan and the additional capital the lender must hold. Higher costs mean some consumers will be priced out of the market.

Because lenders will be forced to hold capital for non-QRM loans, lenders will make fewer loans. When a lender has to hold capital, the lender's ability to make other loans is reduced by the amount of capital held. This in turn reduces the capital in the market available for mortgage loans, ultimately causing a decrease in loans made overall.

QRMs will have the most favorable terms and these favorable terms will not be available to borrowers who are unable to meet the rigid QRM standards. Non-QRM borrowers will be subject to higher interest rates, additional points and origination fees and other requirements imposed by the market, as a market, if any, for non-QRM loans develops. The loan terms offered to non-QRM borrowers could also be impacted. For example, the availability of 30-year fixed rate mortgages is likely to be significantly limited for consumers who cannot meet the QRM requirements, because lenders may be hesitant to offer loan terms as long as 30 years if they are forced to hold capital for the life of the loan. Shorter loan terms will likely result in higher monthly payments and greater difficulty in qualifying for a mortgage based on ability to pay and debt-to-income (DTI) ratio requirements.

There will also be a detrimental impact on smaller banks and lenders. Large lenders who can afford to hold capital will stay in the mortgage market. Smaller lenders that cannot hold capital, or cannot hold as much capital, on their balance sheets will reduce lending or exit the market altogether. Thus, smaller lenders may be forced to exit the market. The definition of QRM will not create competition. Quite the opposite – only the largest lenders will remain, decreasing competition and increasing market risk. The intended goal to eliminate "too big to fail" risk will be defeated.[8]

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[8] Remarks by FDIC Chairman Sheila C. Bair to the ICBA National Convention, San Diego, CA, March 22, 2011 ("We at the FDIC are committed to a future regulatory structure…most importantly, that will put an end to the pernicious doctrine of too big to fail.").

Questions 120 and 123: The Agencies seek comment on the appropriateness of the proposed LTV and combined LTV ratios for the different types of mortgage transactions. The Agencies seek comment on the appropriateness of the proposed front-end ratio limit of 28 percent and the proposed back-end ratio limit of 36 percent.

The loan-to-value (LTV) requirements and DTI ratio limits in the Proposed Rule are not appropriate because they are arbitrary and inflexible. The Supplementary Information states that the data the Agencies reviewed showed that "payment to income ratios did not add significant predictive power" once other borrower and loan characteristics were considered.[9]

The Agencies have included a graph comparing LTV ratio to default rate, and show that as LTV ratio approaches 100, default rates approach 10 percent.[10] This graph is very different for USAA's members – 98 percent of our loans do not fail. Yet, many of our loans fall outside the QRM LTV requirement and/or the DTI ratio limits.

USAA's success is proof of strong lending practices rather than inflexible bright line standards. Our business model focuses on building relationships, and these relationships help us practice good lending by assessing the creditworthiness of our borrowers and using conservative underwriting standards without being hindered by arbitrary requirements and limits.

Question 143: The Agencies seek comment on the potential benefits and costs of the alternative approach, with a broader QRM exemption combined with a stricter set of risk retention requirements for non-QRM mortgages.

Although we do not believe the proposed QRM standard is appropriate, we also do not support the possible alternative approach[11] proposed by the Agencies. This approach creates, by use of strict regulatory guidelines, an inability to use prudent, flexible guidelines to meet a changing population and evolving housing market needs. This alternative approach again takes the credit decision away from the lender, who in many cases has developed a relationship with the borrower. The result for the consumer is the same – increased prices and less favorable terms for low and moderate income borrowers. We suggest that instead of prescribing rigid loan guidelines, the Agencies consider an initial risk retention threshold based on the number and types of mortgage loans in the pool, the originating lender's overall payment history for the type of loan product included (with higher risk retention requirements assigned to loan products having a higher history of default), and a risk retention reduction formula based on the overall default rate in the pool and the time period since origination.

[9] Credit Risk Retention, 76 Fed. Reg. at 24125.
[10] Credit Risk Retention, 76 Fed. Reg. at 24124. Note that it is unclear whether the LTV graph includes investor loan data, and to the extent it does, the information could present an inaccurate picture of the default rate in loans with less than a 20 percent down payment.
[11] *Id.* at 24129.

Question 159(a): Are the proposed requirements for a qualifying automobile loan appropriate?

The answer is simply no. The QAL criteria represent a fundamental misconception – that securitization of auto loans is analogous to residential real estate loan securitization. It is not. The automobile market is fundamentally different from the residential real estate market. Automobiles are a manufactured consumer product with depreciating value. Automobiles pricing is based on completely different market forces than real estate pricing. The "bubble" in the residential real estate market was caused by, among other things, investment and speculation. Such a bubble would not occur in an automobile market.

Because auto loan securitization structures were far less affected by the latest financial crisis than home mortgage securitizations, imposing mortgage-like requirements on auto loans securitizations is unwarranted.[12] The QAL standards should not be imposed at an individual auto loan level. Rather, the standards should be imposed on a weighted-average securitization pool level.

At an individual loan level, the dollar and term risk of auto loans is much less than that of residential mortgage loans. Moreover, auto loans have shorter terms than residential mortgage loans. Additionally, auto loan balances are significantly smaller than the residential mortgage loan balances. The proposed maximum loan term for new vehicle loans, 60 months, ignores the fact that the marketplace readily accepts 72 month loans. If used as a criterion for QAL, maximum loan term should be applied as a weighted-average to the entire auto loan securitization pool, not to each individual loan in the pool. The maximum loan term for used vehicles (loan term plus the difference between the current model year and the vehicle's model year cannot exceed 60 months) also should be applied, if at all, only as a weighted-average to the entire auto loan securitization pool, not to each individual loan in the pool. Moreover, imposing an 80 percent maximum LTV ratio as a QAL criterion is unnecessarily restrictive. As stated, auto loan asset backed securities structures have performed exceptionally well over the past 25 years in an auto lending marketplace in which 100 percent or above advance rates (financing 100 percent of the purchase price plus tax, title and license) have been commonplace.

It is unnecessarily restrictive to impose a 36 percent DTI limit on individual auto loans. For example, it is more common than ever for young adults to live with parents and receive money from parents.[13] Employed young adults are creditworthy borrowers that can safely exceed a 36 percent DTI limit because of their effectively subsidized living expenses.

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[12] Board of Governors of the Federal Reserve System, Report to Congress on Risk Retention, dated October 2010, at 50, *available at* http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf ("Auto loan and lease ABS structures are designed to withstand this level of stress, and almost all performed well during the financial crisis. In fact, few, if any, triple-A tranches of auto ABS have experienced a principal write-down in the nearly 25 years of issuance.").

[13] Caitlin A. Johns, *More College Grads Living with Parents*, CBS News, http://www.cbsnews.com/stories/2006/10/16/earlyshow/main2090521.shtml (February 11, 2009) (citing that half of 2008 college graduates have moved back home and 44 percent of 2007 graduates still live at home, while 34 percent of 18- to 34-year-olds get cash from their parents— an average of $3,410 a year.). Asher Hawkins, *How to Avoid Living at Home After College*, Forbes (May 29, 2010) http://www.forbes.com/2010/05/27/avoid-moving-back-parents-personal-finance-college-grad-10-home.html (citing that 80% of 2009 college graduates moved back home after graduation).

Any DTI restriction or requirement for QAL also should be imposed as a weighted-average at the securitization pool level, not at the individual loan level. Securitization of auto loans effectively spreads the risk presented by individual auto loans over a large pool of such loans, and serves as a very efficient way to diversify and thereby minimize risk to investors of individual loans in a securitization pool becoming delinquent or resulting in losses.

Many Americans depend on privately-owned automobiles and other motor vehicles to get to work or school, shop for necessities or run a small business. For many, this reality means that incurring debt to purchase safe and reliable transportation is a necessity. The auto loan securitization industry provides a highly cost-efficient and relatively low risk mechanism for ensuring the availability of funding for such loans from a wide variety of origination, funding and investment sources.

Low and moderate income borrowers who prudently manage debt will be particularly hard hit by the proposed application of the QAL requirements. If the QAL requirements are imposed on an individual loan basis, the securitizer will be forced to pass on the higher cost of risk retention to such borrowers, which will drive up future loan pricing to these borrowers. This unintended result of the proposal can be avoided if securitizers are permitted to apply the QAL requirements on a weighted-average basis at a pool level.

The Agencies recognize that many prudently underwritten automobile loans will not meet the underwriting standards set forth in the Proposed Rule.[14] We agree. The proposed QAL requirements, particularly if imposed at an individual loan level, will at a minimum raise the costs consumers pay for such loans and are likely to reduce the general availability of such loans as the overall cost of auto loan securitization increases due to higher risk retention. The recovery of the auto industry is a key element of the economic recovery as a whole. The QAL requirements, as proposed, will hinder this recovery.

One other issue that was not addressed by the Agencies is that approximately 20 states require the borrower/owner of the vehicle to maintain possession of the title, not the lien holder as the Proposed Rule would require. This means that, as presently proposed, auto loans to consumers in such states will never satisfy the QAL requirement that the lender hold the title.

Recommendations

We recommend that the Agencies move away from the proposed QRM definition and instead model these requirements on current OCC and OTS standards that balance safety and soundness with flexibility, thereby promoting competition and responsible availability of credit, taking into account the ultimate definition and requirements of the QM. As part of the underwriting process for mortgages, the OTS expects federal thrifts to take into account the capacity and creditworthiness of the borrower, borrower cash down payment, borrower equity, any secondary sources of repayment, any additional collateral and/or credit enhancements (guarantees, private

[14] Credit Risk Retention, 76 Fed. Reg. at 24131.

mortgage insurance, etc.).[15] The OTS, however, does not mandate specific requirements that must be a part of such consideration without exception in order for a residential real estate loan to be considered prudently underwritten. In fact, the OTS has stated that lending policies "may provide for prudently underwritten loan approvals" that are exceptions to standard lending policies. The OTS recognizes the importance of "making credit available to creditworthy borrowers."[16] Furthermore, as the OCC has stated, and USAA's own data shows, "the most convincing proof of the quality and soundness of a real estate mortgage loan is a favorable payment history."[17] The Agencies should avoid a "one-size-fits-all" approach that puts all borrowers in one bucket. Using and properly enforcing the OTS or OCC standards allows for flexibility based on the lender's prudent assessment of the borrower's creditworthiness. Applying a similar standard for QRM would allow for flexibility in working with creditworthy borrowers – first time homebuyers, small business owners, homeowners forced to sell quickly as a result of relocation – as well as for auto loans.

Application of QAL criteria for purposes of exemption from the proposed risk retention requirements should be on a weighted-average basis at the securitization pool level, not at the individual loan level. Due to the relatively low average balances, short terms of auto loans, and the solid historical performance of auto loan securitization structures, the risks individual auto loans present to investors simply do not justify the proposed QAL requirements. In sum, the availability of the QRM and QAL exemption should be broader and more flexible than the proposed definitions.

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We appreciate the Agencies' consideration of our comments. Should you have any questions or wish further clarification or discussion of our points, please contact Deneen Donnley, USAA Federal Savings Bank General Counsel, at 210-456-3430.

Sincerely,

Steven Alan Bennett
Executive Vice President
General Counsel & Corporate Secretary

[15] OTS Regulatory Bulletin RB 37-69, One-to-Four Family Residential Real Estate Lending, at pp. 212.3-212.4 (Feb. 10, 2011).
[16] *Id.* at p. 212.8.
[17] Comptroller's Handbook (Section 213), Real Estate Loans, at p. 7 (March 1990).