CHASE

July 22, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Regulation Z; Truth in Lending; Docket No. R-1417; RIN No. 7100-AD75

Dear Ms. Johnson:

JPMorgan Chase & Co. ("JPMorgan Chase") is pleased to submit this letter in response to the above-referenced proposed rule published on May 11, 2011 (the "Proposal") by the Board of Governors of the Federal Reserve System (the "Board"). JPMorgan Chase is a leader in the mortgage business. It is the third largest originator and servicer of residential mortgage loans in the United States, with over 10% of the market share. Prior to the collapse of the securitization market during the recent residential mortgage crisis, JPMorgan Chase was one of the largest issuers of private-label residential mortgage-backed securities in the United States.

JPMorgan Chase recognizes the Board's efforts in drafting the Proposal, particularly in framing the issues raised by the qualified mortgage alternatives. We also acknowledge the challenges faced by the Consumer Financial Protection Bureau (the "Bureau") as it develops a final rule for underwriting at a time when the mortgage market is still recovering. In these circumstances, it is imperative that the Bureau strike the right balance between ensuring safe and affordable lending, and access to credit for all creditworthy borrowers, including vulnerable populations. We believe that a balanced and transparent set of rules regarding repayment ability would help restore the mortgage market to its full strength. With this goal in mind, JPMorgan Chase provides these comments to the Bureau:

- The final rule should be coordinated with the Dodd-Frank risk retention rule and the Bureau's efforts to improve mortgage disclosures.
- "Qualified Mortgage" must be a safe harbor from liability for ability-to-repay to ensure that consumers have access to affordable and reasonably priced mortgage loans.
- The points and fees test should be adjusted to avoid unintended consequences.
- The Bureau should broaden the category of loans eligible for a streamlined refinancing under proposed § 226.43(d).
- The ability-to-repay rule should retain its flexibility, but additional guidance is needed.

Each of these comments is discussed in more detail below.

I. The Final Rule Should be Coordinated with Other Dodd-Frank Act Rulemakings.

The Dodd-Frank Act represents a sweeping reform of the financial system requiring hundreds of rulemakings, many of which impact mortgage origination, securitization, servicing and loss mitigation. JPMorgan Chase supports well-crafted rules that will help guard against another crisis; however, the sheer number of rules to be implemented over the next several years will impose significant costs on the mortgage industry and on borrowers. More importantly, these rules will take effect at a time when the mortgage industry and the larger economy are still recovering. Without careful coordination, Dodd-Frank rules intended to address weaknesses in the industry may stunt the full recovery of the housing market and other economic sectors.

The most important need for coordination among rulemakings involves the Bureau's ability-to-repay rulemaking and the interagency rule on credit risk retention published for comment on April 29, 2011. 76 FR 24090 (Apr. 29, 2011). The interagency proposal implements the credit risk retention provisions of Dodd-Frank, in which securitizers must retain at least 5 percent of the credit risk of underlying assets, except in the case of government loans and Qualified Residential Mortgage loans ("QRMs"). Congress stated that the six agencies were to define QRM "to be no broader than" a QM as defined by the Bureau through regulation. The agencies were also tasked with defining QRMs based on underwriting and product features that historical loan performance data show result in lower risk of default.

JPMorgan Chase believes Congress clearly viewed QRMs as a subset of QM loans. Although the interagency risk retention proposal was issued before the Board's ability-to-repay proposal, interested parties cannot understand the full impact of the risk retention rules and QRM until the Bureau has finalized the QM definition. In light of these concerns, JPMorgan Chase believes that the Bureau should issue a final rule on ability-to-repay and qualified mortgage *before* the six agencies finalize the rules for credit risk retention and Qualified Residential Mortgages. In addition, as the Bureau develops the final QM definition, it should closely consult with the agencies responsible for the risk retention rule. Coordination between QM and QRM will facilitate the return of reasonable underwriting and robust securitization that ensures liquidity, benefiting consumers by providing a steady supply of safe and affordable mortgages.

The Bureau should also be mindful of the impact of mortgage disclosure reforms on industry's ability to implement a new ability-to-repay rule. To be clear, JPMorgan Chase welcomes the Bureau's efforts to combine the disclosures required under TILA and the Real Estate Procedures Act. Clearer, concise disclosures and uniform rules for content, delivery and accuracy will benefit both industry and consumers, and these reforms are long overdue. However, implementing new combined disclosures will take considerable time and will require significant resources. If industry must also implement a new rule on ability-to-repay at the same time as it must put in place a new disclosure scheme, the mortgage market will experience delays and disruption that will adversely affect lenders and borrowers alike. Therefore, JPMorgan Chase urges the Bureau to take these considerations into account as it finalizes the ability-to-repay rule.

II. "Qualified Mortgage" Must Be a Safe Harbor From Liability for Ability-to-Repay to Ensure that Consumers Have Access to Affordable and Reasonably Priced Mortgage Loans.

Congress enacted Dodd-Frank in the wake of the financial crisis, finding that economic stabilization would be enhanced if the terms and practices of mortgage credit are regulated, while ensuring that consumers have access to responsible affordable mortgage credit. *See* Dodd-Frank Sec. 1402. Dodd-Frank addresses these findings by requiring that originators make a good-faith determination that borrowers have a reasonable ability to repay their mortgage loans as of consummation. Because assessing repayment ability is necessarily subjective in nature, Congress provided a measure of protection from liability for originators who make QMs.

JPMorgan Chase fully supports Dodd-Frank's ability-to-repay requirement and the return to prudent underwriting standards. To ensure that irresponsible practices do not return, TILA provides significant damages for failing to consider repayment ability. JPMorgan Chase is concerned, however, that the potential damages for failing to comply with all aspects of the ability-to-repay rule may also cause originators to lend only to borrowers with significant income and assets, and the most pristine credit histories. The mortgage market is already experiencing a contraction in credit availability that has impaired the ability of many otherwise creditworthy borrowers to refinance into lower rates, and has side-lined many potential home buyers. Any further contraction caused by undue litigation risk will exacerbate these problems and have its greatest impact on underserved communities, including low- and moderate-income borrowers, minority borrowers and first time homeowners.

JPMorgan Chase appreciates the Board's concerns regarding the respective merits of a safe harbor and a rebuttable presumption of compliance, and the incentives each creates. A rebuttable presumption, however, even if carefully drafted, will not provide enough certainty for creditors and the secondary market, and will discourage lending to all borrowers except those with significant assets, income and impeccable credit histories. As a general matter, a rebuttable presumption easily could be challenged by any factual information the borrower introduces. The fact-intensive nature of loan underwriting and the natural inclination of the courts to sympathize with borrowers who are facing foreclosure, may lead to second-guessing of a lender's exercise of discretion in underwriting. Lenders will simply not take the risk of incurring TILA damages, or will increase prices accordingly to cover the risk, if the only protection is a rebuttable presumption. As a result, a large percentage of Americans may arbitrarily be shut out of the residential mortgage market.

Moreover, there is little experience with a rebuttable presumption in the area of mortgage underwriting. We note that the Board created a rebuttable presumption of compliance for its ability-to-repay rule for both HOEPA loans and "higher-priced mortgages" which took effect on October 1, 2009. 73 FR 44522 (Jul. 30, 2008). The rule has been in effect for a short time, and there has been little lending in the higher-priced segment of the mortgage market during this limited timeframe. Moreover, the Board's ability-to-repay rule does not create a defense to foreclosure against assignees for the life of the loan, as does the Dodd-Frank ability-to-repay test. JPMorgan Chase submits that the current HOEPA presumption should not be viewed as an appropriate compromise between protecting consumers from unaffordable lending and ensuring that mortgage credit is broadly available.

JPMorgan Chase further believes that the legal uncertainty introduced by a rebuttable presumption would deter investors from purchasing a loan that is subject to an ability-to-repay challenge for the duration of the loan's life. Therefore, a rebuttable presumption will decrease liquidity in the residential mortgage market, and the impact will be visited most directly on community banks and other smaller lenders which cannot afford to hold loans in portfolio. Even larger lenders will face increased costs if they must retain more loans in portfolio. Borrowers will ultimately bear these burdens in the form of decreased access to mortgage credit and higher costs for available loans. These outcomes would be extremely harmful for a still-recovering housing market and economy.

If the final rule provides only a rebuttable presumption of compliance, some investors might be willing to accept loans only after they are well-seasoned. Typically, underwriting defects often surface in the first few years of a loan's life, and deterioration in loan performance after that is usually attributed to customer life or financial events unrelated to the original loan's underwriting quality, such as death of a wage earner or serious illness. Thus, investors may determine that they will only purchase loans that have performed for two or three years, because they perceive that the likelihood of a successful challenge on the grounds of repayment ability will be diminished at that point. The reduction in liquidity would have harmful effects on the flow and cost of mortgage credit to consumers.

Creditors, assignees and consumers are best served by a clear safe harbor for QM loans. If the Bureau declines to provide such a safe harbor, however, JPMorgan Chase suggests that the Bureau explore a safe harbor for assignees who perform due diligence similar to the safe harbor provided in many state high-cost lending laws. Assignees, in contrast to creditors, do not underwrite loans and cannot monitor creditors to ensure that each loan is properly underwritten without incurring expenses and delays that are antithetical to a liquid mortgage market. Those assignees who take reasonable care to ensure that mortgage loans they purchase have been originated with due consideration to the borrowers' ability to repay should be provided with an express safe harbor from liability. As discussed below, however, we believe the best outcome is a QM safe harbor available to creditors and assignees.

JPMorgan Chase respectfully submits that the final rule must define a QM that is a safe harbor for creditors and assignees, to ensure that affordable mortgage credit is broadly available as intended by Congress. In order to achieve this result, the QM requirements must be clear enough to give creditors and investors reasonable certainty that a loan meets the safe harbor requirements. It is particularly important to avoid burdening community banks and other smaller lenders with litigation costs, as they may not be able to achieve economies of scale with a smaller loan volume. If smaller entities are driven from the mortgage market by unreasonable litigation risks, competition is reduced to the detriment of consumers. At the same time that a clear safe harbor is required, however, the safe harbor must also be flexible enough to avoid raising arbitrary barriers to mortgage credit, especially for vulnerable populations. JPMorgan Chase recognizes that striking the appropriate balance between clarity and flexibility is a delicate and complex task, and we offer specific suggestions below.

QM should be a safe harbor that includes the underwriting considerations in Alternative 2 of the Proposal, with adjustments for clarity.

First, the safe harbor should exclude loans with features that could result in excessive payment shock. JPMorgan Chase believes the QM safe harbor should not include loans with risky features. Proposed § 226.43(e)(2) provides that a QM cannot have features that result in negative amortization, interest only payments or balloon payments, except as permitted in § 226.43(f). JPMorgan Chase supports this provision. These loan features raise the risk of payment shock, which is incompatible with the concept of an inherently low-risk loan. A safe harbor qualified mortgage that eliminates these types of loan features will go a long way towards ensuring that borrowers can afford to repay their loans.

Second, the safe harbor should include all of the underwriting requirements in the proposed rebuttable presumption in §§ 226.43(e)(1) and (e)(2)(v) (Alternative 2). JPMorgan Chase urges the Bureau to define QM to include the requirements in proposed §§ 226.43(e)(1) and (e)(2)(v) (Alternative 2), as well as the additional ability-to-repay requirements. In some areas, however, these requirements should be adjusted. Most importantly, the safe harbor should include some quantitative standards with compensating factors to ensure that creditworthy borrowers have access to QM loans.

Using this approach, a creditor would have to take the following steps in order for a loan to meet the QM safe harbor:

(1) Verify and document the income and/or assets relied on, using third-party sources

(2) Verify the consumer's employment status if income from employment is relied on

(3) Consider the consumer's current debt obligations

(4) Qualify the consumer using a monthly payment that is identical to the qualifying payment in the QRM proposal, specifically, a payment that—

-- includes taxes, insurance and similar obligations

-- is based on the highest rate that could occur five years after the date of the first full payment following consummation; and

(5) Consider the monthly payment on any simultaneous loans of which the creditor knows or has reason to know.

(6) In addition, the loan would have to meet quantitative standards for—

-- the borrower's debt-to-income ratio;

-- the loan-to-value ratio; and

-- the borrower's credit history.

We offer specific suggestions for some of these criteria below.

Permit creditors to verify current debt obligations for QMs with a credit report. JPMorgan Chase supports this criterion as consistent with prudent underwriting. The Proposal does not indicate how creditors may verify current debt obligations. To provide certainty for creditors, we believe the final rule should provide that a creditor may rely on the information in a consumer's credit report that is obtained within 90 days of consummation. This standard is consistent with GSE requirements and with the QRM proposal. *See* proposed § ___.15(d)(5)(ii), 76 FR 24090 (Apr. 29, 2011).

The final rule should conform the QM safe harbor required payment calculation to the requirement in the QRM proposal to the maximum extent possible. JPMorgan Chase strongly urges the Bureau to conform the QM to the QRM rule in this area to avoid unnecessary and unreasonable increases in operational and technology costs, the incidence of inadvertent errors and violations, and other unintended consequences. For example, proposed § 226.43(e)(2)(iv)(A) would require a creditor to qualify the borrower based on the maximum interest rate that could apply during the first five years after consummation. The Board notes that although the Proposal is faithful to the text of Dodd-Frank, it would not require the creditor to use the rate adjustment that occurs at the end of the fifth year following consummation. This would exclude the first rate adjustment of a typical 5/1 ARM, which could be substantial. JPMorgan Chase believes that the Bureau should conform the required payment for QM to the required payment in the QRM proposal. *See* proposed § ___.15(b)(8)(iii)(A)(1), 76 FR 24090 (Apr. 29, 2011). Thus, a creditor would have to qualify the borrower using the highest rate that could apply five years after the due date of the first full payment required under the terms of the loan agreement. This would enable creditors to calculate only one qualifying payment for both QM and QRM, lowering the compliance burden and eliminating opportunities for errors. Using the payment required by the QRM proposal would also ensure that a borrower could afford the payment resulting from the first adjustment on typical 5/1 ARM products.

JPMorgan Chase supports considering the monthly payment on subordinate liens for QM but this is problematic for other creditors' liens. JPMorgan Chase believes that sound underwriting includes consideration of other liens held by the creditor, or that are otherwise known to the creditor. The Proposal would include liens of other creditors if the creditor knows about them or has reason to know about them. A "reason to know" standard is difficult to comply with and should be eliminated from the final rule. At a minimum, lenders need clear guidance from the Bureau as to what constitutes reason to know about other creditors' liens.

In addition, the Proposal presents significant issues regarding qualifying payments for subordinate liens. We suggest that the final rule's safe harbor permits creditors to consider an existing second lien in accordance with current FHA guidelines. A more difficult situation is presented by simultaneous HELOCs that will be held by another creditor. The Proposal would require creditors to calculate a monthly payment based on the amount drawn at account opening for QMs. This is impracticable when Chase does not hold the lien and does not know the terms of the open-end plan. Therefore, we advocate eliminating this requirement altogether, or, finalizing it into a simpler approach, such as requiring the creditor who will make the first lien to factor in one percent of the second lien amount into the qualifying payment on the first lien. The Bureau should also coordinate this requirement for QMs with the six agencies responsible for the risk retention rule and the QRM definition, as there are similar requirements for a QRM. Consistent with our earlier comment, it is imperative that calculation requirements for QM and QRM be aligned to the extent possible.

The final rule's QM safe harbor should require a maximum single debt-to-income ratio, specific credit history standards and a maximum LTV ratio, unless there are compensating factors.

The Bureau should require a maximum back-end DTI ratio of 45 percent for QM unless the borrower has significant assets, and should allow creditors to rely on FHA guidelines for "debt" and "income."

The Proposal requires creditors to consider, for QMs, either the ratio of the consumer's total monthly debt obligations (including mortgage obligations) to the consumer's monthly income, or the consumer's residual income. The Board did not establish a maximum DTI ratio or a minimum residual income amount for QM, stating that such standards could limit credit availability without providing offsetting benefits to consumers. The Board cited data showing that 44 percent of borrowers in low-income areas and 31 percent of borrowers in high cost areas had DTI ratios that exceeded 45 percent.

JPMorgan Chase submits that a back-end DTI ratio is an important underwriting consideration. The more a borrower's income must be used to service all recurring debt, the more likely a brief interruption in income or a large unexpected expense could compromise his or her ability to maintain mortgage payments. The Board's proposal includes DTI as a consideration for QM, but we believe that without a maximum back-end DTI standard, the QM safe harbor would not provide sufficient certainty to creditors and investors. A safe harbor without a quantitative standard for DTI means that creditors and investors would be subject to the very real possibility of litigating whether the safe harbor is, in fact, available -- based on the question of whether a borrower's DTI ratio for a given loan was reasonable. For the reasons similar to those discussed above with regard to rebuttable presumption, these uncertainties would result in increased costs to borrowers and reduced credit availability.

JPMorgan Chase believes that the final rule should impose a maximum back-end DTI ratio of 45 percent for the safe harbor. This measure is consistent with widely used underwriting standards. Prudent underwriting, however, also allows for higher DTIs for borrowers with significant assets. The final rule should, therefore, include in the safe harbor loans to borrowers with back-end DTI ratios that exceed 45 percent up to a maximum of 50 percent, if the borrower has at least one-year's worth of reserves. JPMorgan Chase appreciates the Board's concern that a maximum DTI ratio could unduly restrict credit, including credit to low-income borrowers and in minority neighborhoods. We urge the Bureau to consider delineating a special rule or program for borrowers who have demonstrated the ability to maintain a higher DTI ratio and/or do not have a traditional credit history, so that these borrowers can obtain QM safe harbor loans.

The proposed staff commentary provides that creditors may rely on FHA guidelines for the meaning of "debt" and "income" for QMs. JPMorgan Chase supports reliance on FHA guidelines and would also support reliance on GSE standards, and believes that this will help provide certainty for creditors. We urge the Bureau to move this provision from the commentary and into the regulation itself to send an unequivocal message that use of FHA or GSE guidelines (as presently written) creates a safe harbor for creditors. The credit risk retention rule takes this approach, and the Bureau should adopt the same clear statement in the final rule on ability-to-repay and QM. *See* proposed § ___.15(b)(8)(ii), 76 FR 24090 (Apr. 29, 2011). The definitions of income, debt and assets in the credit risk retention rule and the ability-to-repay and QM safe harbor rule should be identical. Varying definitions and methods of calculating DTI, residual income and monthly payments will create an unnecessary compliance burden and increase the opportunities for error. This would especially affect smaller lenders who do not have the means to program multiple calculations into their loan origination systems.

The QM safe harbor should include specific criteria for credit history, but should provide flexibility.

The proposed rule's rebuttable presumption QM alternative requires consideration of credit history using third-party sources. No specific measures of credit history are required. Consistent with our comments on the need for a clear safe harbor, we urge the Bureau to adopt objective standards for credit history. The Bureau should provide flexibility to lenders, however, to ensure that the standards are appropriate and do not exclude deserving borrowers.

At a minimum, the Bureau should adopt in the QM safe harbor the credit history standards in the QRM proposal, specifically, (1) the borrower must be current on all accounts at the time of consummation; (2) within the previous two years, the borrower must not have been more than 60 days late on any obligation; and (3) within the previous three years, the borrower has no bankruptcies, repossessions, foreclosures, deeds-in-lieu of foreclosure, or short sales. These criteria are identical to the QRM criteria, they are objective and would provide certainty to creditors and investors that a borrower met the safe harbor requirements for credit history. Adopting the QRM criteria would also align the QM requirement with QRM, easing operational and compliance concerns. We suggest, however, that the Bureau consider allowing creditors to ignore de minimis past due amounts, and to consider objective extenuating circumstances such as job loss or serious illness that might lead to some delinquencies.

JPMorgan Chase believes that, in some cases, a more flexible approach to borrower credit history is required. Some borrowers have little credit history but have stable income and assets, and can demonstrate their ability to repay loans if their history of paying rent, utilities, and other regular obligations is considered. We urge the Bureau to adopt clear standards for consideration of nontraditional credit history for QMs. The Bureau might consider, for example, allowing creditors to consider a borrower's record of timely payments on rent and other regular obligations for a two-year period before consummation. In this way, the QM safe harbor will be available for loans to borrowers who have a demonstrated ability to pay their obligations timely but who may not have a traditional credit history.

The final rule should also allow creditors the option of using a minimum credit score instead of credit history for QMs. Credit scoring generally outperforms most rules-based approaches to credit history in predicting the risk of default. Indeed, credit scoring is widely incorporated in other underwriting guidance because of its superior performance in predicting risk of default. Guidelines currently maintained by FHA and the GSEs, as well as prior prudential guidance from the federal banking regulators, all acknowledge the predictive value of high quality credit scoring models. In some instances, credit scores are explicitly incorporated into these underwriting matrices. Therefore, we support an approach that allows the lender, at its option, to use a validated credit scoring model in place of specific credit criteria for QMs. JPMorgan Chase recognizes that the Bureau may not wish to embed a specific scoring system into the final rule's safe harbor. Accordingly, JPMorgan Chase urges the Bureau to explore whether credit scoring algorithms and associated cutoffs could qualify for use in the QM definition without endorsing a specific credit score model.

The QM safe harbor should include a maximum loan-to-value ratio, but should allow for compensating factors.

The Proposal does not include the borrower's loan-to-value ratio as a consideration in either alternative definition of QM. In our experience, a borrower's loan-to-value ratio is an important consideration in assessing the borrower's ability to repay the loan. Therefore, JPMorgan Chase respectfully submits that the Bureau should include a maximum loan-to-value ratio in the QM safe harbor. A maximum loan-to-value ratio of 90 percent, with mortgage insurance, would be appropriate. The safe harbor could allow for a higher loan-to-value ratio, up to 95 percent, if the borrower has a credit history or credit score that exceeds the minimum standards set forth in the safe harbor.

In addition, to ensure that loans to first time homebuyers and low- or moderate-income borrowers are not unfairly excluded from the QM safe harbor, we urge the Bureau to explore permitting borrowers to use government or charitable contributions such as grants or "forgiveable loans" to make up part of the downpayment or equity used to calculate the LTV ratio. Many such programs have been successful in increasing access to sustainable homeownership for a broad spectrum of consumers. JPMorgan Chase would be willing to share its knowledge of these programs with the Bureau to ensure that low-risk loans to borrowers needing downpayment assistance are eligible for inclusion in the QM safe harbor.

III. The Points and Fees Test Should be Adjusted to Avoid Unintended Consequences.

The points and fees threshold serves an important purpose. Loans that impose unnecessary fees should not be accorded the special treatment given Qualified Mortgages. However, Chase believes that the items that comprise points and fees need to be modified and that the threshold for small loans must be increased beyond what is currently proposed. In addition, the Bureau should consider adopting a tolerance for the points and fees limit, given the opportunities for inadvertent mistakes in calculating points and fees.

In addition, it is critical that the points and fees calculation used to establish whether a loan is a Qualified Mortgage be exactly the same as the points and fees calculation employed in the Qualified Residential Mortgage definition, if any. Creditors will need to program their loan origination systems to ensure compliance with the points and fees calculation, and employees will need to be trained as well. Having similar, but not identical, criteria will add complexity and create confusion without a meaningful benefit.

JP Morgan Chase supports the alternative definition of "total loan amount."

The Proposal requested comment on whether the definition of total loan amount, for purposes of the points and fees calculation, should be streamlined to better ensure that the total loan amount includes all credit extended other than financed points and fees. Specifically, the proposed new definition would consist of the principal loan amount (rather than amount financed) minus charges that are points and fees under § 226.32(b)(1) and are financed by the creditor. JP Morgan Chase strongly supports the use of this revised definition. The current definition of total loan amount is convoluted and confusing, and leads to inadvertent errors. The new definition will not result in much difference in the actual amount and will make compliance easier.

Loan originator compensation should be excluded from points and fees.

The inclusion of loan originator compensation in points and fees is highly problematic. At JP Morgan Chase, the amount of incentive compensation is based on aggregate volume or aggregate dollar amount of the loans. Higher-performing loan originators will receive a higher incentive compensation per loan than others. The incentive compensation paid on a loan originated by a high-performing loan originator can be significantly greater than the incentive paid to a loan originator who does less volume for a loan with the same terms. Inclusion of this payment in the points and fees calculation creates a disproportionate impact. It does not protect the borrower and it does not correlate to whether the loan is a well-underwritten and quality loan. Moreover, given the fact that the Board's existing loan originator compensation rule prohibits the varying of loan originator compensation based on the terms or conditions of the loan (other than loan amount), loan originator compensation has been clearly de-linked from the cost of mortgage credit, and there is little benefit to be derived from including loan originator compensation in the points and fees. We therefore suggest that the Bureau use the authority given it in the Dodd-Frank Act to "revise, add to or subtract" the criteria used to define Qualified Mortgages by removing the requirement to include loan originator compensation in calculating the 3% points and fees test.

Bona fide third-party fees should be excluded from points and fees, even if they are finance charges, consistent with Dodd-Frank.

The proposed commentary to the regulations states that "in general, a creditor is not required to count in points and fees for a qualified mortgage any bona fide third party charge not retained by the creditor, loan originator or an affiliate of either." However, the proposed regulations include all finance charges under §§ 226.4(a) and 4(b) except for interest or the time-price differential and certain mortgage insurance premiums. Closing agent charges under § 226.4 (a) are therefore still included in points and fees. JP Morgan Chase requests that the regulation and commentary clearly state that closing agent charges should not be included in the points and fees calculation as long as the closing agent is not an affiliate and the creditor does not retain a portion of the charge. The amount of these charges is not controlled by the creditor. These fees are generally fixed, in that the same amount is charged for a small loan as a large loan. In JP Morgan Chase's experience, these fees are most frequently in the $300 - $500 range for a refinance and more for a purchase, which can be a significant portion of the allowable threshold, especially for smaller loans.

Similarly, loan-level price adjustments ("LLPAs") should be excluded from the points and fees definition on agency loans as bona fide third-party charges not retained by the creditor. LLPAs are fees assessed by Fannie Mae and Freddie Mac on loans delivered to them. They are based on certain eligibility or other loan features, such as credit score, loan purpose, occupancy, number of units, product type, etc. These fees are cumulative and can be **as high as 5%** for a cash-out refinance on a condominium with a 660 FICO and an 80% LTV. A 5% premium for a relatively low-risk loan is a significant price increase. If the condo is not a principal residence, the fee would be even higher. The fees are passed on to a third-party (the GSE) and are not retained by the lender. Since these fees must be paid to the GSEs upon delivery, lenders must charge the borrower in some manner. If LLPAs will be included in points and fees, lenders will be incentivized to build them into the borrower's interest rate in order to ensure that they do not exceed the 3% points and fees threshold, which will cost many borrowers more money over the term of the loan.

JPMorgan Chase requests that the Bureau clarify in the final rule that points and fees includes only fees charged at or before closing. Creditors must be able to determine whether a loan's points and fees exceed the limit for a qualified mortgage before consummation. As the Board notes in the preamble to the Proposal, "Creditors might be exposed to excessive litigation risk if consumers were able at any point during the life of a mortgage to argue that the points and fees for the loan exceed the qualified mortgage limits due to fees imposed after loan closing." 76 FR 27404. For example, a creditor might impose a fee for an appraisal to be conducted by an affiliate in connection with a modification, Without clarification in the final rule, the appraisal fee could be counted towards points and fees under proposed § 226.43(e)(3). This clarification is critical to ensure that, among other things, creditors are not deterred from making beneficial modifications for borrowers having difficulty making payments.

In addition, the Bureau should adopt a tolerance for the 3 percent limitation to address the complexity of the points and fees test. Regulation Z has long provided tolerances for other complex calculations such as the finance charge and APR, on the grounds that inadvertent, de minimis errors should not trigger TILA's significant remedies. We submit that the points and fees calculation, like the finance charge, is complex, and Dodd-Frank has added new items, such as prepayment penalties and originator compensation, which require lenders to make several assumptions in determining the amounts to be included. Under these circumstances, it is likely that lenders may impose their own more conservative limits on points and fees to help ensure that their loans do not exceed the QM limit on points and fees. A more conservative limit will have harmful effects for borrowers who take out smaller loans. To avoid this unintended consequence, the final rule should include a tolerance of ¼ of 1 percent or $250 for the 3 percent limit on points and fees.

Finally, JPMorgan Chase is concerned about the inclusion of charges that the Board has deemed to be prepayment penalties in points and fees. The Board has proposed amendments to Regulation Z that would define prepayment penalties to include the interest charged through the end of the month in which the borrower prepays an FHA loan. We believe that these charges should not be deemed prepayment penalties under Regulation Z, and should not be counted towards points and fees in any event. If FHA does not provide a definition of QM for FHA loans and the Bureau's definition applies to FHA loans by default, we are concerned that these charges would be included in the 3 percent cap on points and fees for QMs. Because FHA loans tend to be smaller on average than non-FHA loans, this would have an adverse impact on FHA borrowers. The final rule should avoid this result.

The proposal for excluding bona fide discount points needs clarification and should be adjusted for jumbo loans.

The Proposal permits a creditor to exclude up to two bona fide discount points from the points and fees test if three requirements are met. The first two criteria are that (1) the original undiscounted interest rate will not exceed a certain percentage point threshold over the Average Prime Offer Rate (APOR), and (2) the amount of the reduction is consistent with established industry practices. These requirements are contained in the Dodd-Frank Act. A third requirement added by the proposed regulation is that the reduction must be based on the amount that the creditor can reasonably expect to receive from secondary market investors in return for the mortgage loan.

Eliminate the requirement that the reduction must be based on amount expected from secondary market investors. JPMorgan Chase believes that the first two requirements are sufficient and that the last requirement would be burdensome and is not needed. The amount of compensation that a lender expects to receive from secondary market investors will generally establish only the base rate of a loan. Factors influencing the secondary market pricing are myriad, including loan-to-value, credit score, lien status, occupancy type and property type. Therefore, the ability to establish a connection between the discount points and these considerations is simply impracticable. Similarly, the amount the lender would be willing to discount the rate will be based on a number of factors that may or may not relate to the compensation expected from the secondary market. Furthermore, pricing decisions change quickly in reaction to market forces, and it would be extremely burdensome to attempt to document for each loan how the loan was priced in relation to the market in order to defend the exclusion of the discount points.

Finally, lenders do not always sell their loans in the secondary market or may not plan to do so at the time the loan is originated. It is quite possible that the final credit risk retention rules will cause a greater share of the loans originated in the future to be held in portfolio, at least initially, and not sold in the secondary market. We therefore request that the requirement to show that the reduction is based on the amount of compensation expected to be received from the secondary market be removed as a requirement for the exclusion of discount points. The other requirements – namely, that the initial undiscounted rate cannot exceed a certain level and that the amount of the rate reduction be consistent with industry practice – sufficiently protect consumers.

Adjust the interest rate threshold for jumbo loans and loans secured by second homes. Under the Proposal, the interest rate on a loan prior to applying the discount cannot exceed the APOR for a comparable transaction by more that one percent in order for up to two discount points to be excluded and by no more than two percent in order for up to one discount point to be excluded. The amount by which the interest rate can exceed the APOR is the same for all loans, including jumbo loans and loans secured by vacation properties. Yet, these loans will almost always have a higher interest rate than a conforming loan on a principal residence. Rates are higher for jumbos than for loans under the GSEs' conforming loan limit because rates on conforming loans reflect the GSEs' lower borrowing costs. Therefore, to provide equal treatment for these loans, we suggest that the threshold used to determine exclusion of discount points be one percentage point above the applicable threshold for the conforming loans and loans on principal residences. Additionally, we suggest that the use of the term "percent," which was taken from the Dodd-Frank Act, should be revised to read "percentage point" to more clearly reflect the intent of the legislation.

The proposed threshold for small loans is insufficient to mitigate the adverse impact of the points and fees test on minority and low- and moderate-income borrowers.

The Dodd-Frank Act permits the establishment of a higher points and fees threshold for small loan sizes. This was in recognition of the fact that many costs incurred by lenders in making mortgage loans are fixed costs. For example, credit reports, tax service fees, flood certifications, courier fees, wire and overnight delivery fees cost the same for a $40,000 loan as for a $300,000 loan. Similarly, closing agents generally do not vary their fees based on loan size. The closing agent fee must also be included in points and fees. Finally, creditors must charge fees to recover their fixed overhead, which similarly does not vary based on loan size. Imposing a 3% points and fees threshold on a $50,000 loan would reduce the allowable points and fees to $1,500. This would make it extremely difficult for lenders to make small loans.

The Proposal would have several undesirable consequences for consumers that Congress could not have intended. Specifically, in each case where points and fees exclude the cap, lenders would be given the unenviable task of choosing between making loans at a loss, or increasing the interest rate to cover the upfront fees. A higher rate would adversely affect many borrowers, but it would fall especially hard on low- and moderate-income borrowers and minority communities. In fact, some of these borrowers would not be able to qualify under increased interest rates necessitated by the points and fees limitation. Lenders could try to avoid these unintended consequences by making the loan without the protection of a QM designation — with all the attendant negative consequences, including risk retention and assignee liability. These outcomes are completely contrary to Congress' intent to incentivize lenders to make QMs free of risky features. In the alternative, lenders could submit loans to the FHA. This option, however, could be eliminated by subsequent rulemakings. Specifically, Dodd-Frank authorizes HUD to establish a definition of QM for FHA loans, which may include a limitation on points and fees, thereby foreclosing this option for loans that do not meet the conventional QM definition established by the Bureau. The Proposal, therefore, will result in the origination of fewer small loans overall.

Unfortunately, the higher points and fees threshold for smaller loans as currently proposed is insufficient to ensure that lenders will continue to make small loans. For example, the proposed points and fees threshold for a $50,000 loan would be only $2,000. The highest threshold will be $2,625 for a loan in the amount of $74,999. Our analysis shows that the proposed tiered percentage thresholds for small loans are not high enough to cover the standard fees for smaller loans. This negative impact will be felt disproportionately by minorities, LMI borrowers and borrowers in rural areas who have smaller loan sizes.

Chase suggests a substitute threshold of the greater of 3% and $3,000 for loan amounts up to $75,000. We believe that a fee allowance of $3,000 will be adequate for loans of up to $75,000 and will hopefully preserve credit availability for minorities, LMI borrowers and borrowers in rural areas. This type of formula (the greater of a certain dollar amount and a certain percentage of loan amount) is used in HOEPA and in several state high-cost laws to ensure that small loans will continue to be available.

IV. The Bureau Should Broaden the Category of Loans Eligible for a Streamlined Refinancing Under Proposed § 226.43(d).

The proposal provides some welcome but severely limited flexibility for streamlined refinancings of non-standard mortgages into standard mortgages. More specifically, the proposal relieves the creditor from the duty of verifying income or assets, and a more favorable payment calculation is allowed than would be permitted under the general ability-to-repay rule. JPMorgan Chase believes, however, that this proposal is unduly restrictive, as it will not allow many vulnerable borrowers the opportunity to replace their existing higher rate loans by refinancing into more affordable and relatively safe loans. Other borrowers will be denied access to streamlined refinancings that have performed successfully in the past but that do not meet the restrictions of proposed § 226.43(d).

In particular, the following aspects of proposed § 226.43(d) are, in our view, unreasonable: (i) the streamlined refinancing exception is limited to borrowers who currently hold non-standard mortgage loans, which means that borrowers who hold ordinary mortgages (*e.g.*, fixed rate, fully amortizing loans) cannot use this exception, and (ii) the credit standards for this provision are unduly rigid, which means that many creditworthy borrowers will not be eligible and the remaining requirements in the ability to repay rule will continue to apply.

The streamlined refinancing exception is inappropriately limited to borrowers who currently hold non-standard mortgage loans.

JPMorgan Chase believes that the final rule should permit creditors to employ streamlined refinancings for other borrowers besides those identified in Dodd-Frank. Borrowers with established payment histories and with loans that are not "nonstandard" loans should be able to refinance without documentation of income or assets, and without consideration of DTI or other ratios. We note, in this regard, the remarks of Senator Dodd during debate on the conference report, on the fact that FHA and VA streamlined refinancings would be exempt from the restrictions:

> It is the conferees' intent that the Federal Reserve Board and the CFPB use their rulemaking authority under the enumerated consumer statutes and this legislation to extend this same benefit for conventional streamlined refinance programs where the party making the new loan already owns the credit risk.

> This will enable current homeowners to take advantage of current low interest rates to refinance their mortgages.

156 Cong. Rec. S5928 (daily ed. July 15, 2010) (statement of Sen. Christopher Dodd).

Therefore, it is critical that the Bureau consider giving borrowers with "standard" mortgages the benefit of a streamlined refinancing process.

The GSEs and governmental agencies have long offered streamlined refinancings and the HARP program. These programs have not raised concerns about predatory practices. As noted, Dodd-Frank provided an automatic exemption from the income verification requirements for VA, FHA and RHS streamlined refinances based on criteria that are less stringent than the refinances referenced in the proposal.

JPMorgan Chase requests that the refinancing exemption in the proposal be broadened to include HARP refinances and similar programs. The HARP program was established as a means to reduce foreclosures and increase stability in the real estate and mortgage markets. A loan can only be refinanced under HARP if the borrower is not in default, the new payment is fully amortizing and both the original and new loans comply with agency requirements. HARP allows borrowers who would ordinarily not be able to refinance their loans due to a high LTV ratio or other reasons to refinance into another loan that provides a benefit to the borrower. For instance, the monthly payment or interest rate could be lowered, an adjustable interest rate converted to a fixed interest rate, a non-amortizing loan made into an amortizing one or the amortization term reduced. These changes benefit the borrower and decrease the chance of a default. The credit decision on these loans is based largely on the borrower's past credit history, payment performance and verification of a steady income source. Note that the income must be documented and DTI and credit score requirements met if the principal and interest payment will increase by more than 20%.

HARP loans do not meet all the ability-to-repay requirements. The borrower may not meet DTI and residual income requirements, as lenders sometimes rely only on the borrower's past performance and past credit history to determine the ability to repay. In many ways, HARP loans are similar to loan modifications. JP Morgan Chase believes that the Bureau should use its authority to issue regulations providing that HARP and similar programs are exempt from the ability-to-repay requirements, as they promote the public's and the administration's interest in making credit available to consumers and increasing stability in the housing market.

The credit standards under Proposed § 226.43(d) are unduly rigid, and the remaining requirements in the ability-to repay-rule will continue to apply.

If the Bureau retains Proposed § 226.43(d), we suggest that the following changes be made to the rule:

The standard "Likely to go into default" is problematic and should be eliminated or clarified.

Regarding § 226.43(d)(3)(B), we request that the Bureau eliminate this requirement – at a minimum, additional guidance for determining when a borrower is "likely to go into default." This is a difficult standard to meet without clear guidance.

The Bureau should allow borrowers to apply after a recast.

The Proposal would provide that the borrower must apply for a standard loan before the nonstandard loan recasts. In response to the Board's request for comment on this point, JPMorgan Chase believes that borrowers should be able to take advantage of the refinancing even if they apply after their nonstandard loan recasts. In our experience, borrowers often discount the impact of a payment increase on their budgets and may not seek a refinancing until they have experienced the full impact of the increase on their finances.

The DTI and residual income requirements should not apply.

The need to consider the borrower's monthly debt-to-income ratio or residual income should not be required for these refinancings. The purpose of this exception is to ensure that vulnerable borrowers can refinance to more stable, affordable products, thereby avoiding payment shock and the likelihood of a default. Standards that are too rigid could significantly reduce the number of borrowers who qualify for this exception. The rule already provides that a borrower cannot have made more than one payment more than 30 days late during the 24 months prior to application and no payments more than 30 days late during the six months prior to application. If the borrower is still employed and has not incurred significant additional debt obligations prior to the refinance, the monthly debt-to-income and residual income requirements should not apply.

V. The Ability to Repay Rule Should Retain its Flexibility, but Additional Guidance is Needed.

Chase fully supports the principle that borrowers should not be given loans that they do not have a reasonable ability to repay. The Proposal regarding assessing the ability to repay provides the flexibility that is necessary and should not be changed other than to provide clarity and additional examples and guidelines. The ability-to-repay requirements must remain more flexible than the Qualified Mortgage requirements to ensure that borrowers who need loans that do not qualify for Qualified Mortgage status or who cannot meet the DTI, credit history or LTV requirements can still get loans if properly underwritten. We therefore suggest that the language in the proposed commentary stating that creditors may look to widely accepted governmental or nongovernmental underwriting standards in evaluating the elements of the ability to repay be added to the regulation itself. We also suggest that the regulation or staff commentary provide clear guidance on adapting the standards for loans to individuals with little income or a high DTI ratio but whose significant assets are more than sufficient to repay their loans, and that loans to limited liability companies that are guaranteed by an individual be underwritten as if the guarantor was the borrower. Our comments on the specific elements of the ability-to-repay requirements follow:

JPMorgan Chase supports consideration of current or reasonably expected income or assets.

JP Morgan Chase supports the provision that the creditor need only verify and document the amount of income or assets relied upon in making the credit decision. We suggest that the regulations specifically allow the use of internet-based tools to verify income. These tools aggregate data from employers and enable creditors to verify the employment and income provided by the borrower without requiring the creditor to individually contact each employer, thereby reducing costs while still maintaining reasonable standards. In addition, JP Morgan Chase urges the Bureau to permit reliance on information from statistically qualified models that estimate income or assets. The Board has allowed the use of such models in its ability to repay rule for credit cards. *See* Comment 226.51(a) (1)-4, 12 CFR Part 226, Supp. I. If the Bureau were to allow this approach, borrowers would benefit by the considerable cost savings, particularly with respect to smaller loans.

Current employment status should be verified, and additional guidance would be helpful.

JP Morgan Chase currently verifies employment status if employment income is relied on to repay the loan. We agree with the suggestion that a Leave and Earnings Statement to support employment and income of military personnel is sufficient. The Veterans Administration has used this documentation for years. We welcome any additional guidance that the Bureau can provide on acceptable means of considering and verifying certain employment situations.

The rule for calculating monthly payments should be uniform and should be simplified.

The Proposal requires that the monthly payment for ARMs be calculated one way to establish the borrower's ability to repay. The method of calculating the monthly payment for ARMs is different when determining whether the mortgage is a Qualified Mortgage, and yet another method is required under the proposed Qualified Residential Mortgage regulations. The method for calculating the monthly payment for ARMs should be identical throughout. Otherwise, creditors will need to program their systems and train their employees to use three different methods. This will increase the likelihood of mistakes.

The Proposal requires that all higher-priced balloon loans, no matter how long the balloon period, be underwritten using the maximum payment during the term of the loan. This will include the balloon payment. Balloon products are valuable and prudent lending choices for many borrowers because borrowers who know they may not stay in their home for a long period of time can obtain a better rate than with a standard 30-year fully-amortizing mortgage. Requiring balloon mortgages to be made only if the borrower is able to repay the balloon payment out of current and expected income and assets will destroy their utility and reduce the availability of affordable credit to this kind of borrower. Therefore, it is appropriate to make adjustments to the threshold used to define higher-priced balloon loans. We suggest that the threshold for jumbo balloon loans and investment properties be increased from 1.5 percentage points above the APOR to 2.5 percentage points over the APOR.

Monthly payment on simultaneous mortgages is problematic if the mortgage is held by another creditor.

We agree with the Proposal to consider a home equity line of credit as a mortgage for purposes of this provision. Borrowers with second liens have a higher default rate than those with only one mortgage on their property. This second lien is often a HELOC, and, therefore the payment on these types of obligations is important to consider when determining the ability to repay a loan. We suggest that the final rule permit creditors to consider an existing second lien in accordance with current FHA guidelines. A more difficult situation is presented by simultaneous HELOCs that will be held by another creditor. The Proposal would require creditors to calculate a monthly payment based on the amount drawn at account opening. This is impracticable when JP Morgan Chase does not hold the lien and does not know the terms of the open-end plan. Therefore, we advocate eliminating this requirement altogether or finalizing a simpler approach, such as requiring the creditor who will make the first lien to factor in one percent of the second lien amount into the qualifying payment on the first lien.

Monthly payments for taxes and insurance: the final rule should provide guidance on how to convert non-monthly obligations to monthly payments.

JP Morgan Chase believes that the mortgage industry needs clear guidelines and thresholds wherever that is possible. We can align our practices to different underwriting methods and can make modifications to comply with new requirements as long as the requirement is clear and measurable. Therefore, we would appreciate guidance on how to convert non-monthly obligations into pro rata monthly amounts and how to calculate expected taxes. Since lenders will need to include expected taxes in the calculation, we suggest that the final rule allow the use of the taxes referenced in the title report

JP Morgan Chase supports consideration of current debt obligations, but further guidance is needed.

JP Morgan Chase believes that prudent underwriting requires the consideration and verification of all obligations known to the creditor at the time of underwriting. Consistent with our comment on QM, we believe that the final rule should provide that a creditor may rely on the information in a consumer's credit report that is obtained within 90 days of consummation. This standard is consistent with GSE requirements and with the QRM proposal. *See* proposed § ___.15(d)(5)(ii), 76 FR 24090 (Apr. 29, 2011).

Additional guidance would be welcome on monthly debt-to-income ratio or residual income.

The Proposal provides that creditors may look to widely accepted government and non-government underwriting standards for appropriate thresholds, and that a creditor can use either

DTI or residual income as the basis for determining whether the borrower has the ability to repay the loan. No specific DTI or residual income is required. JP Morgan Chase welcomes the flexibility provided in the Proposal. The Proposal also states that compensating factors can be included to mitigate a high DTI or low residual income, and gives one or two examples. The Board has asked if additional guidance on compensating factors should be given. JP Morgan Chase would welcome additional examples (such as the GSE's annuitization of assets policy) with the understanding that the examples are illustrative and not the exclusive options for compliance with this requirement. If residual income is used, the creditor should be permitted to make allowances for geographic region and family size. Federal and state taxes should also be deducted when calculating residual income. As suggested in the Proposal, a safe harbor should be provided for creditors relying on automated underwriting systems where the developer certifies that the use of the DTI is empirically derived and statistically sound. Finally, as stated before, we also suggest that the regulation or staff commentary provide clear guidance on adapting the standards on loans to individuals with little income or a high DTI ratio but whose significant assets are more than sufficient to repay their loans.

JP Morgan Chase supports the Proposal's flexibility for credit history, but advocates for further adjustments for self-employed borrowers and borrowers with seasonal income.

The Proposal provides that credit reports or nontraditional credit references such as rental or utility payment history can be used. JP Morgan Chase supports this flexibility. It is important that first-time homebuyers particularly be allowed to establish credit history through these methods As stated previously, JP Morgan Chase welcomes and approves of the flexibility provided in the Proposal. However, we are concerned that that the flexibility will not be sufficient to alleviate the obstacles faced by borrowers who are not in traditional wage-earning jobs. This would include self-employed borrowers, as well as persons who rely heavily on seasonal or side jobs. Minority and LMI borrowers will likely be disproportionately and adversely affected. JP Morgan Chase believes that the rule could be made more flexible without undermining consumer protection by creating exceptions for loans with low loan-to-value ("LTV") ratios and refinances where the monthly payment will not be increased over the borrower's prior payment amount, and the borrower's financial condition has not deteriorated since the inception of the loan being refinanced.

We are pleased to have had this opportunity to provide you with our comments on the Proposal. If you have any questions concerning this comment letter, or would like to discuss further any of the matters that we have raised, please feel free to contact me.

Sincerely,

Ravi Shankhar, Senior Vice President