OHIO CREDIT
UNION LEAGUE

August 1, 2011

VIA E-MAIL TO:

regs.comments@occ.treas.gov Department of the Treasury Office of the Comptroller of the Currency 250 E Street SW, Mail Stop 2-3 Washington, D.C. 20219	RE:	Docket No. OCC-2011-0002 RIN 1557-AD40
regs.comments@federalreserve.gov Jennifer L. Johnson, Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue NW Washington, DC 20551	RE:	Docket No. 2011-1411 RIN 7100-AD-70
comments@FDIC.gov Robert E. Feldman, Executive Secretary Attention: Comments Federal Deposit Insurance Corporation 550 17th Street, NW Washington, D.C. 20429	RE:	12 DFR Part 373 RIN 3064-AD74
comments@sec.gov Elizabeth M. Murphy, Secretary Securities and Exchange Commission 100 F Street, NE Washington, D.C. 20549-1090	RE:	File No. S7-14-11 RIN 3235-AK96
RegComments@fhfa.gov Alfred M. Pollard, General Counsel Attention: Comments/RIN 2590-AA43 Federal Housing Finance Agency 1700 G. Street, NW, Fourth Floor Washington, D.C. 20552	RE:	RIN number 2590-AA43
www.regulations.gov Regulations Division, Office of the General Counsel Department of Housing and Urban Development 451 7th Street, SW, Room 10276 Washington, D.C. 20410-0500	RE:	Docket No. FR-5504-P-01 Credit Risk Retention

RE: Credit Risk Retention Proposed Rules

Dear Ladies and Gentlemen,

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the Federal Reserve Board's (Board) Proposed Rule implementing Section 941(b) of the Dodd-Frank Act.

The comments reflected in this letter represent the recommendations of the Ohio Credit Union League. The Ohio Credit Union League (OCUL) is the trade association for credit unions in Ohio and advocates on behalf of 384 credit unions and their 2.7 million members in the state of Ohio. We appreciate the opportunity to provide suggestions and feedback to the Federal Reserve Board prior to adoption of any rules as proposed.

Summary of Proposal

Section 941(b) of the Dodd-Frank Act requires that securitizers of asset-backed securities (ABS) retain not less than five percent of the risk of any asset conveyed by means of an asset-backed security. Certain types of assets are exempt from this five percent retention standard, including Qualified Residential Mortgages (QRMs) and securities backed by certain commercial mortgages, commercial loans and automobile loans meeting underwriting standards set forth in this Proposed Rule.

OCUL supports the creation of an efficient, effective, and fair secondary market with equal access for lenders of all sizes. OCUL also supports strong oversight and supervision of securitizers to ensure safety and soundness. In addition, OCUL supports the requirement that securitizers retain five percent of the risk of assets conveyed by means of an ABS and the exemption of some assets meeting standards set forth in the Proposed Rule from the retention requirements.

However, OCUL disagrees with and opposes the proposed definition of a QRM as set forth in the Proposed Rule. In particular the stringent underwriting standards imposed by the rule, such as the requirement of a high down payment/loan to value ratio, the exclusion of private mortgage insurance, the stringent credit history requirements, and low proposed debt-to-income ratios, which may create unnecessarily high barriers for qualified borrowers.

This proposed QRM standard is too narrow, is overly broad, and goes further than the language in the Dodd-Frank Act.

OCUL further notes that the definition of a QRM in this Proposed Rule is not in agreement with the definition of a Qualified Mortgage (QM) set forth in Rules issued regarding Title XIV of the Dodd-Frank Act regarding the ability of a borrower to pay; this differing standard may cause confusion for financial institutions attempting to comply with both standards in their mortgage lending programs.

Definition of a QRM

Under the Dodd-Frank Act and the Proposed Rule, securitizers of ABS are required to retain five percent of the risk of the underlying assets conveyed in an ABS. Some types of assets are exempted from this requirement. Mortgages backed by U.S. government entities such as the Federal Housing Administration (FHA) are exempted from risk-retention standards, as are Qualified Residential Mortgages (QRMs), as defined in the Proposed Rule.

QRMs are defined as mortgages secured by a first lien on a one-to-four family property to be purchased or financed, and have a maturity date of not more than thirty years. In addition, these mortgages must meet underwriting guidelines which are more stringent than the methodology used by most creditors today. Failure to meet any one of these guidelines disqualifies the loan from being considered a QRM.

The most problematic of those underwriting guidelines are:

- The borrower cannot currently be 30 days past due on any debt obligation, and cannot have been more than 60 days past due on any obligation in the past 24 months;
- The borrower must provide a 20 percent down payment in the case of a purchase transaction, and private mortgage insurance cannot be used to support the down payment;
- The mortgage must have maximum front-end and back-end debt-to-income ratios of 28 percent and 36 percent respectively;
- The loan must have a maximum loan-to-value ratio of 80 percent in the case of a purchase transaction, 75 percent on a refinance transaction, and 70 percent on cash-out refinance loans.

Under the Proposed Rule, failure to meet any <u>one</u> of the delineated standards disqualifies the mortgage from exemption as a QRM. Modern underwriting and risk management practices consider all factors such as these together, and a weakness in one factor may be balanced against other stronger factors in making the determination of whether to extend credit. Historically, credit unions have used underwriting standards that take into account multiple factors in determining the creditworthiness of their members. As an example, a stable borrower in a high income bracket can support, in general, a higher debt-to-income ratio, as discretionary income is much higher.

Non-QRM loans will be subject to the five percent risk retention requirements for securitizers of ABS under this Proposed Rule, which will further require increased capitalization costs on their part. In order to compensate for this cost, the cost of borrowing under a non-QRM loan that will be securitized will increase significantly in comparison to QRM loans. This will have the effect of narrowing the market to QRM loans, with their stringent underwriting requirements, and loans backed by governmental entities such as the FHA, for all borrowers who cannot meet the QRM requirements. The QRM loan will become the standard.

OCUL urges that the regulators reconsider the above underwriting requirements in light of modern underwriting and risk management practices. Allowing for a more balanced approach to making a credit decision, taking into account all factors used to determine creditworthiness, would have the effect of allowing credit unions to continue to make sound loans to their members.

High Down Payment, DTI & PTI Ratios, and Private Mortgage Insurance

The requirement of a 20 percent down payment has been characterized as a "return to previous practices" regarded as more sound. However, this requirement will have the effect of delaying the purchase of a new home by potential buyers by years. Given the median price of a home in the U.S. is $172,900, the requirement of a 20 percent down payment is in excess of $34,000, not including any closing costs. However, research has shown that mortgages with significantly less than 20 percent may not be significantly more likely to default than loans with a 20 percent down payment if other metrics used for underwriting indicate low risk. OCUL, recognizing that some level of borrower investment ("skin in the game") is crucial, recommends a more reasonable down payment requirement in order to qualify as a QRM, and further urges that private mortgage insurance (PMI), properly underwritten, be considered in reaching the 10 percent down payment requirement.

Furthermore, in drafting the Dodd-Frank Act, a number of senators considered and intentionally omitted a minimum down payment requirement. Additionally, no less than 158 members of Congress have weighed in on this issue by filing a comment letter opposing this proposed statement.

Debt-to-income (DTI) ratios are also an indicator of risk in residential mortgages. However, the threshold established by the Proposed Rule of 36 percent seems overly severe in light of research showing higher DTI ratios may produce loans with low default rates if other creditworthiness metrics balance the DTI metric. Currently, the FHA DTI requirement is set to be 41 percent, which is higher than the DTI metric under this Proposed Rule, and that metric is only one of several taken into consideration.

Finally, the Proposed Rule does not allow for the use of mortgage insurance as risk mitigation. Such insurance has long been in use to counterbalance factors such as a low Loan-to-value or Debt-to-Income ratio. The QRM definition should be enlarged to include conventional insured loans (loans with private mortgage insurance) to allow the appropriate continued use of insurance as risk mitigation.

OCUL urges the regulators to refine the underwriting characteristics used to define a QRM to allow a more flexible layered approach that balances all creditworthiness metrics to produce a more rounded evaluation of whether a particular borrower is likely to default on a mortgage. OCUL further urges the expansion of the definition to include properly structured use of insurance as a risk mitigation factor.

Low Risk Mortgages under the Dodd-Frank Act Should be Defined Consistently

Regulations recently proposed implementing Title XIV of the Dodd-Frank Act regarding the ability to repay a mortgage loan. Those regulations offer two alternative definitions which could offer a "safe harbor' for compliance. The first alternative defines a Qualified Mortgage (QM) as as a loan of 30 years or fewer without negative amortization, interest-only payments, or a balloon payment that has fees and points under 3% of the loan value, is underwritten with a considered and verified ability-to-pay determination, and the underwriting of the mortgage is (A) based on the maximum interest rate that could apply in the first 5 years (in the case of an ARM), (B) uses a payment that fully amortizes the loan; and (C) takes into account any other mortgage obligations of the borrower. The second alternative adds some specific underwriting criteria such as consideration and verification of (A) the consumer employment status, (B) the consumer's monthly payment on any simultaneous mortgage, (C) the consumer's debt obligations, (D) the consumer's monthly debit-to-income ratio or residual income, and (E) the consumer's credit history.

The criteria for a Qualified Mortgage (QM) offered in these proposed rules is more flexible that those offered in this Proposed Rule's Qualified Residential Mortgage (QRM) under discussion. Maintaining two related and similarly named sets of rules regarding mortgages unnecessarily adds complication for creditors offering good quality low risk lending products to borrowers.

Conclusion

The Dodd-Frank Act mandates the requirement that securitizers of Asset-Backed Securities (ABS) retain five percent of the risk associated with such assets when they are conveyed to another. Some assets are exempted from the risk retention requirement, including Qualified Residential Mortgages (QRMs) as defined under this Proposed Rule.

The definition of a QRM is overly narrow and the underwriting requirements are too stringent. Further, they do not allow the balancing of all factors to determine creditworthiness, instead setting thresholds, the missing of any one automatically disqualifying the QRM designation. These factors include down payment requirements and lower debt-to-income thresholds, and do not allow use of private mortgage insurance as risk mitigation.

These stringent underwriting requirements will have the ultimate effect of delaying, if not precluding, homeownership for many moderate and low income borrowers, especially minorities. Using each of the requirements as a threshold which must be met, rather than allowing the use of multiple factors in a more layered approach to credit determination, will result in denial of QRM status for mortgages to a significant portion of U.S. borrowers who could be in a low risk category of defaulting on a residential mortgage loan. These borrowers would be forced to obtain a loan at a higher interest rate to compensate for the risk retention that would be required by securitizers or, alternatively, obtain loans from a government-backed entity.

OCUL is also very concerned that while the QRMs intended to be the exception rather than the rule in the first mortgage market, there is a likelihood that this may become the standard. More importantly, the proposed QRM rule may result in the FHA becoming the favored and possibly the exclusive entity for mortgages in excess of 80% loan to value. Credit unions historically do not use the FHA as an entity for these mortgage services. The average credit union member is more likely to use conventional financing.

Implementation of two somewhat similar definitions of appropriate low risk mortgages under separate portions of the Dodd-Frank Act increases the complexity of compliance by lenders in providing high quality low risk lending products to borrowers.

OCUL urges the creation of a more flexible underwriting standard which better reflects the current practice of evaluating multiple factors to determine creditworthiness and the likelihood of default on a residential mortgage loan, much like those factors defined under the Proposed Rule for Title XIV of the Act. By expanding the definition of a QRM exempt to the five percent risk retention requirement for securitizers, access to residential mortgage loans will be more easily extended to creditworthy moderate and low income borrowers.

OCUL appreciates the opportunity to present comments on behalf of Ohio's credit unions to the Board on its proposed rules for credit risk retention. Thank you for your consideration of the comments presented in drafting of any final rules. If you have any questions, please contact me at (614)923-9766 or jkozlowski@ohiocul.org

Sincerely,

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Paul Mercer, President, Ohio Credit Union League
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