Hogan Lovells

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

August 1, 2011

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2010-0002
"Credit Risk Retention"

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

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File No. S7-14-11

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552
Attention: Comments/RIN 2590-AA43

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Ladies and Gentlemen:

The Housing Finance Alliance (HFA) is pleased to comment on the notice of proposed rulemaking (NPR)[1] issued by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Securities and Exchange Commission, Department of Housing and Urban Development and Federal Housing Finance Agency – collectively referred to herein as "the agencies" – to implement Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2]

The HFA is a coalition of organizations with a strong interest in ensuring the vitality of the nation's housing finance system, focused on ensuring that reform of the U.S. housing finance system does not sow the seeds of a repeat of the events that led to the collapse of the government-sponsored enterprises (GSEs). HFA strongly supports a return to sound underwriting standards, but is concerned that the provisions in the NPR related to the "qualified residential mortgage" (QRM)

[1] Interagency Proposed Rule, *Credit Risk Retention*, 76 Fed. Reg. 24090 (Apr. 29, 2011) *available at* http://edocket.access.gpo.gov/2011/pdf/2011-8364.pdf.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).

exemption would seriously disrupt the housing finance market by making mortgages either unavailable or unnecessarily expensive for may creditworthy borrowers. The constraints imposed by the QRM definition will mean that many loans that ensure sustainable home ownership, especially for the first-time home buyers, will either be too costly, or simply will not be made at all. The needs of these buyers, who are key to the recovery of the housing market, might then be partially met through the Federal Housing Administration (FHA) based on its exemption from Section 941. But this would only take place at the cost of escalating risk to taxpayers.

I. The QRM as Proposed Will Discourage Lending to First-Time and Low- and Moderate-Income Home Buyers

The QRM as proposed is drawn so narrowly that mortgages for first-time home buyers, low- and moderate-income borrowers, and home buyers in rural areas are excluded and, thus, are made subject to risk retention. If these borrowers are to have any access to affordable mortgage lending under the proposed rule, such access will most likely be through FHA-insured mortgages, which is already insuring 68 percent of new lending in the low down payment market.

A recent study by a third-party analytical firm found that the proposed QRM excludes 39 percent of U.S. mortgages solely by virtue of its down payment requirement, with the ultimate number of disqualified mortgages likely far higher once all the other eligibility criteria are taken into account.[3] The Heritage Foundation, using data collected by the REALTORS©, estimates that as many as 75 percent of 2010 home buyers would not have qualified for a mortgage.[4]

HFA is concerned that the proposed rule is so narrow that it will discourage many lenders from offering mortgages to qualified low down payment borrowers. As currently drafted the QRM would further increase demand for FHA-insured mortgages, even though private capital is available to insure low down payment mortgages. These borrowers are key to re-establishing a healthy residential mortgage market. HFA supports a QRM definition that encourages prudent mortgage lending and securitization, but not one which makes such lending and securitization unnecessarily costly to the private sector and which thereby increases taxpayer risk.

II. The QRM Should Be Redefined to Meet Congress' Intent of Encouraging Better Underwriting to Protect Borrowers, Lenders and Investors

The QRM as proposed is flawed because it is so stringent that it will restrict access to low-cost, privately insured, mortgages. The goal of the risk retention provisions in the Dodd-Frank Act was to encourage – better underwriting to protect borrowers, lenders and investors and to shut down predatory lending practices, not to make mortgages less available for borrowers who had low down payments. The QRM rule should be restructured to ensure that qualified residential mortgages will be affordable to the home buyer and meaningful for the securitizer and revised to advance sustainable home ownership in a manner that will also resuscitate the private mortgage securitization market. Nothing in the statute calls for a Federal down payment standard to apply to a QRM..

To accomplish the original intent of Congress, the HFA recommends that the final rule recognize the role of private mortgage insurance (MI) as both a criterion for QRM eligibility and as a form of overall risk retention. Congress has directed that this be done with regard to the QRM based in part on the

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[3] Housing Wire, *QRM would have cut out 39% of homebuyers in 2010: CoreLogic* (May17, 2011) *available at* http://www.housingwire.com/2011/05/17/qrm-would-have-cut-out-39-of-homebuyers-in-2010-corelogic.

[4] http://www.themoralliberal.com/2011/06/01/qualified-residential-mortgage-regulations-threaten-the-housing-market/

role MI plays in reducing the risk of default. Acknowledging the role of private mortgage insurance would increase the number of loans eligible for the QRM. If this change were made, sustainable higher-LTV loans would qualify for the QRM and thus be originated and securitized with private capital reducing the risk to the investor. Mortgage insurers put their own capital at risk when insuring a mortgage, meaning that its incentives are directly aligned not only with those of investors, but also of borrowers, which is consistent with congressional intent with regard to the QRM.[5] Private mortgage insurers have a history of partnering with lenders, investors and community groups to work with borrowers in default. In addition, MI provides protection for investors in mortgage-backed securities by ensuring a significant cushion – usually 25 percent of the loan amount – against loss of principal.

The use of MI as a criterion for the QRM will meet Congress' intent by putting private capital at risk. It will also prevent undue reliance on a set of QRM criteria that regulators think now create a "gold standard" for mortgage origination but that could impede the housing recovery as many creditworthy borrowers will have difficulty in meeting the QRM standard. As a result, loans to these borrowers will either be more expensive as they are pushed into non-QRM loans or they will be driven to FHA.

Finally, HFA urges additional changes to the rule to address the undue complexity and severity of the proposed requirements applicable to the QRM. These include restrictive debt-to-income (DTI) requirements that HFA believes would block almost all first-time home buyers from the market, as well as bar the vast majority of low- and moderate-income borrowers throughout the US, in rural, urban and suburban markets. While DTIs are a critical facet of sound underwriting, these should be set not through hard caps, but rather by case-by-case underwriting, based on full documentation, that ensures long-term ability to repay a loan on a fully amortized basis. This is precisely the criterion established in Title XIV for QMs and it provides all the requisite protection for borrowers and investors that Congress stipulates.

III. **The GSE Exemption Should Be Retained**

HFA endorses provisions in the NPR that would deem a guarantee from Fannie Mae or Freddie Mac to be permissible risk retention as long as the GSEs are in conservatorship, receivership or the "bridge" status provided in law.[6] HFA is focused on reforming the GSEs so that Fannie Mae and Freddie Mac are replaced with entities that will not repeat the risk-taking that led to the GSEs' conservatorship and all the systemic risk resulting from their poor mortgage securitization practices.

HFA is working to accelerate Administration and Congressional action on GSE reform. However, until it occurs and the structure and role of the GSE successors is known, Fannie Mae and Freddie Mac are vital to a stable U.S. housing finance system and to its near-term recovery. Thus, the final rule should retain the NPR's treatment of GSE guarantees as a form of permissible risk retention pending further congressional action related to these entities.

Conclusion

HFA pledges to work with the agencies to support the substantive work to recraft the QRM to achieve a U.S. risk retention framework that ensures effective incentive alignment without damage to sustainable home ownership. We urge the agencies to take the time needed to get this rule right.

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[5] Senator Mary Landrieu et al, *Comment Letter on Risk Retention Provisions of Sec. 941 of Dodd-Frank Act* (Feb. 16, 2011) *available at* http://www.sec.gov/comments/df-title-ix/asset-backed-securities/assetbackedsecurities-44.pdf.

[6] The Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654.

The residential mortgage market remains far too fragile. As currently drafted, the NPR approach to risk retention in that market not substantiated by Congressional intent, data or policy objectives.

Sincerely,

W. Michael House
For the Housing Finance Alliance