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MMBA
MASSACHUSETTS MORTGAGE BANKERS ASSOCIATION

July 29, 2011

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Gentlemen:

As the leading statewide Association representing mortgage lenders in the Commonwealth of Massachusetts, the Massachusetts Mortgage Bankers Association (MMBA) recognizes that as mortgage lenders, there is a need to take responsibility for some of the excesses that occurred during the housing boom of the last decade. We are cognizant that changes are needed to ensure that these excesses are not repeated in the future. It is critical however that the preventative measures that are put into place promote both economic recovery and the availability and affordability of mortgage credit to consumers.

The intention of risk retention under the Dodd-Frank Act was to align the interests of borrowers, lenders and investors in the long-term performance of loans. Implementation of this regulation in its current form will result in much higher costs for consumers when loans are subject to risk retention requirements, which will reduce access to credit to other consumers. In recognition of these costs, the Dodd-Frank Act currently allows an exemption from risk retention requirements for "qualified residential mortgages" (QRM).

Of significant importance, the QM presumption/safe harbor, under the Ability to Repay provisions of Dodd-Frank, requires consideration of many of the same concerns as QRM. Like the QRM – which offers an exception from risk retention to encourage better-underwritten, more sustainable loans – the QM offers

decreased liability for QM mortgages. We believe that it is critical that the definitions of both the QM and QRM be consistent; and that both rules be addressed together.

Dodd-Frank and this proposal prohibit lenders from making a mortgage loan unless the originator makes a reasonable determination, in good faith, based on verified and documented information at the time the loan is consummated, that the consumer has a reasonable ability to repay the loan, including all applicable taxes, insurance and related assessments.

MMBA supports the establishment of an ability to repay requirement for mortgage loans. However, since the requirement will apply broadly and bring considerable liability to lenders and assignees for any violations, it is essential that the rule's QM requirements include definitions and means of compliance that are not ambiguous. Clear "bright line" or "safe harbor" requirements are necessary to ensure the availability of sustainable mortgage credit to a wide array of qualified borrowers at affordable costs.

If these requirements are inappropriately implemented, we are concerned that many borrowers will be excluded from affordable mortgage credit and will be subject to unreasonably increased financing costs, which will result in the undermining of a housing economic recovery.

The marketplace in which these changes are being proposed has changed significantly since the housing crisis began –

- The marketplace is virtually devoid of the "exotic" mortgage products; credit is substantially tightened and several factors have limited the availability of mortgage credit to highly qualified borrowers;

- The most qualified borrowers today find the process of qualifying for a mortgage far more difficult than ever. Existing regulations and the GSE guidelines already demand more documentation and verification than in previous years;

- The significant quantity of evolving guidelines is placing significant stress on all lenders. This factor, compounded by the potential legal liability of up to $100,00 per loan for failing to meet the ability to repay requirement will undoubtedly lead to overly conservative lending decisions by lenders;

- There is concern that tighter credit standards will adversely impact fair lending by disproportionately impacting diverse communities as well as and low- and moderate-income families.

We feel that it is critical that the following factors are given consideration prior to implementing any final rules.

- Structure the QM as a legal safe harbor that may be more extensive than the requirements proposed in order to ensure the availability of sustainable, affordable mortgage credit to the widest population of qualified mortgage borrowers;

- Provide a well-defined QM safe harbor with specific product features, documentation and underwriting requirements that will serve as an alternative to the proposed QRM. The right QM

definition will encourage the origination of sustainable mortgages and better serve the interests of investors as well as borrowers, as well as encourage private capital back to the marketplace.

- Because mortgage underwriting is an art and not a science, lenders should be permitted to retain discretion within acceptable parameters to ensure that qualified borrowers are not unduly denied credit for sustainable mortgage products. QRM should be defined using flexible guidelines, rather than specific parameters, in order to preserve lenders' ability to adapt to borrowers' needs. The rules should be focused on ensuring that products are sound and sustainable, carefully underwritten and well documented with reasonable discretion for underwriters to qualify creditworthy borrowers within these boundaries.

- Historically, large down payments have served as a major barrier to homeownership for first-time borrowers and minorities and they are unnecessary if other requirements ensure sound underwriting and sustainable products. To qualify for QRM under the proposal, the borrower must make a 20 percent down payment and have a maximum loan-to-value (LTV) ratio of 80 percent for purchase loans and a 75 percent combined LTV for refinance transactions, further reduced to 70 percent for cash-out refinances. In addition to the down payment, the borrower must have cash to pay closing costs. The proposed decreased LTV guidelines will serve to lock many qualified borrowers out of the housing market as well as prevent many income qualified borrowers from refinancing to obtain a more affordable payment.

- While it is important that underwriting include consideration of the borrower's debt and income, creditworthy borrowers should not be denied more affordable financing simply because they fail to meet an unreasonably low debt to income ratio (DTI). Consideration should be given to requiring establishment of DTIs but not overly restricting the limits. If ratios are specified, they should be established at higher levels consistent with agency requirements and subject to satisfaction through compensating factors such as personal savings and positive credit history.

- The Federal Housing Finance Agency (FHFA) found that less than one third of loans purchased in 2009 by FNMA and FHLMC would have met these requirements. This is particularly notable as 2009 is widely recognized as representing the most cautiously underwritten market in decades.

- Significantly increase the limit on total points and fees in the alternatives proposed to ensure the availability of credit.

- As proposed, the GSEs are exempt from the proposal's risk retention requirements during conservatorship, and FHA and other agency loans are exempt under Dodd-Frank. While the GSE exemption is appropriate at this time, as long as GSE securitizations enjoy an exemption, private investors subject to risk retention would have great difficulty competing given their extra capital costs and applicable risk retention requirements. As the economy recovers, the GSE's share of loans would continue to grow.

The securitization issue is not simple. The proposed accounting treatment of the 5% piece would require a much greater analysis than is currently available. Premium Recapture Accounts come into play, but would they be based on the par value or the premium value of the securities. Also to be determined is how the values would be handled when loans pay off or go into delinquency?

To date, regulators have not provided an estimate of the cost of risk retention to the consumer. Some estimates have concluded that 5 percent risk retention could result in as much as 3% increase in interest rates for loans funded through securitization. While that estimate may be high, even a one-percentage point increase in interest rates could be devastating to a fragile housing market. This should be done before finalizing a rule that imposes 5 percent risk retention across such a broad segment of the market.

An additional concern of risk retention is that many smaller banking institutions would not have a balance sheet to handle it. By creating such a narrow QRM market, the proposed rule will reduce competition and accelerate consolidation of the mortgage finance market, thereby creating potential systematic risk versus reducing risk.

MMBA supports the establishment of a regulatory risk retention structure that facilitates a housing recovery and ensures access to conventional mortgage credit for credit-worthy borrowers, including low- and moderate-income households, minority families and first-time buyers, while ensuring sound underwriting and reasonable product standards.

In defining the "Qualified Residential Mortgage" exemption from risk retention requirements, regulators should be cognizant of the importance of not constraining credit for qualified borrowers by implementing overly restrictive guidelines; it is important to preserve reasonable levels of lender discretion.

The proposed regulations will have a significant impact on credit availability and affordability for all homebuyers and homeowners as well as others in the marketplace. While the MMBA supports enhanced standards through the QRM exemption, we urge that they be further evaluated to avoid unintended consequences. It is critical to all that we restore a strong and stable housing and mortgage finance market, we would be happy to provide any further insights throughout the evaluation and implementation process.

Sincerely,

Kristin Langone
Executive Director