Housing Partnership Network

Social Mission. Private Enterprise.

Comments by the Housing Partnership Network on the Re-Proposed Credit Risk Retention and Qualified Residential Mortgage Rule

October 30, 2013

Board of Governors of the Federal Reserve System
20th St. and Constitution Ave, NW
Washington, DC 20551
Attn: Robert deV. Frierson, Secretary
Docket No. R-1411

Office of the Comptroller of the Currency
400 7th St. SW, Suite 3E-218
Washington, DC 20219
Docket No. OCC-2013-0010

Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429
Attn: Robert E. Feldman, Exec. Secretary
RIN 3064-AD74

Federal Housing Finance Agency
400 7th St. SW
Washington, DC 20024
Attn: Alfred M. Pollard, General Counsel
RIN 2590-AA43

Securities and Exchange Commission
100 F St. NE
Washington, DC 20549-1090
Attn: Elizabeth Murphy, Secretary
File Number S7-14-11

Department of Housing and Urban Development
451 7th St. SW, Room 10276
Washington, DC 20410

RE: Joint Proposed Rule on Credit Risk Retention OCC RIN 1557-AD40; FRB RIN 7011-AD70; FDIC RIN 7011-AD74; SEC RIN 3235-AK96; FHFA RIN 2590-AA431; HUD RIN 2501-AD53

Dear Sir/Madame,

The Housing Partnership Network (HPN) appreciates the opportunity to comment on the credit risk retention proposed rule published in the Federal Register on August 28, 2013.

HPN is an award-winning business collaborative of 100 of the nation's most successful affordable housing and community development nonprofits. Creating private sector partnerships and enterprises that achieve ambitious social missions, HPN and its members work together to scale innovation and impact, helping millions of people gain access to affordable homes and thriving communities that offer economic opportunity and an enhanced quality of life. In 2013, HPN received the MacArthur Foundation Award for Creative and Effective Institutions, in recognition of its ongoing leadership and innovation in affordable housing.

HPN members are diversified social enterprises combining a mission focus with business acumen. The members' businesses include lending, real estate development, property management, and housing counseling. All of our member work to link the communities they serve to services – education, workforce development, and health care. Collectively, HPN members have developed or rehabilitated 340,000 affordable homes, provided $10 billion in CDFI financing, and assisted 5 million people through housing, community facilities, and services.

HPN members are also leaders in single-family development, neighborhood stabilization, and housing counseling – all elements of our organizations' mission-driven efforts to provide and sustain homeownership opportunities for low-income households. Of our 97 members, 46 members develop single-family housing for sale to low-income people, and 45 offer housing and/or financial counseling as part of their businesses. Since 1995, these member organizations have provided counseling support to over 650,000 low- and moderate-income families. More than 100,000 of those families have either bought or retained their homes. In addition, 41 of our members participate in Neighborhood Stabilization Program activities in their communities.

Summary of Comments

HPN applauds the new revisions to the proposed risk retention and qualified residential mortgage (QRM) rule. In aligning the QRM definition with the Consumer Financial Protection Bureau's qualified mortgage (QM) definition, regulators have responded to concerns raised in our previous comment regarding the need to balance responsible lending with preserving access to credit for creditworthy borrowers, including LMI and minority borrowers. In particular, the rule eliminates the previous QRM definition's twenty percent down-payment, incorporates greater flexibility into underwriting requirements, and provides greater flexibility for small lenders.

However, HPN is concerned that regulators have not explicitly exempted state and local Housing Finance Agencies (HFAs), Treasury-certified Community Development Financial Institutions (CDFIs), and non-profit creditors originating fewer than 200 loans annually from the credit risk retention rule, in line with the exemption that was amended to the CFPB Ability-to-Repay/QM rule in May 2013. As noted in the amendment to the Ability-to-Repay rule,[1] community-focused lending programs play an important role in the housing sector by providing access to low-risk and affordable credit to low- and median- income borrowers. The lending programs employed by these organizations generally use flexible standards tailored to individual borrowers, which may fall outside the underwriting and loan feature requirements specified by the QM definition. As a result, under the current proposed rule, securities collateralized by these loans may be subject to risk-retention requirements that could strain the ability of community-focused lenders to raise sustainable capital.

Finally, HPN strongly encourages regulators to reject the alternative 'QM-Plus' definition outlined in the re-proposed rule. The 'QM-Plus' definition incorporates many of the elements of the initial QRM definition that drew concern from HPN and other affordable housing advocates, including a 70% LTV requirement that is even stricter than the initial proposal's 80% LTV. If

[1] Federal Register Docket No. CFPB-2013-0002

adopted, the QM-Plus definition would exclude a significant proportion of borrowers from the private mortgage market and would increase the cost of credit for most American households.

Balancing Responsible Lending with Access to Credit

The definition of QRM outlined in the initial proposed rule did not, in our view, strike an appropriate balance between encouraging responsible lending and facilitating broad access to affordable credit. Of greatest concern was the requirement that a loan have a 20% down-payment, with no subordinate liens, in order to be designated a QRM. According to the UNC Center for Community Capital, a 20% down-payment requirement for QRMs would exclude as many as ten performing loans for every foreclosure prevented, with a disproportionate effect on African-American and Latino borrowers. Aligning the QRM definition with QM, which has no down-payment requirement, excludes far fewer creditworthy borrowers, while still maintaining a low default rate.[2]

Compounding our concerns about access to credit were other elements of the initial QRM definition, including the respective front- and back- end DTI ratios of 28% and 36%, the 75% LTV requirement for rate and term refinancing, and the exclusion of subordinate liens, which in many cases are used by nonprofit lenders as tools to help creditworthy borrowers with limited savings to afford a mortgage. All together, these elements yielded a QRM definition that risked creating an overly-restrictive industry standard for mortgages, which would exclude many creditworthy consumers from the opportunity to own a home.

The re-proposed rule makes considerable advances in addressing these concerns. Aligning the QRM and QM definitions means that QRM-qualifying loans and refinances will not be subject to a down-payment requirement. The new definition also raises the DTI ratio and incorporates the QM ban on risky loan types and the 3% cap on total points and fees. Finally, the new definition includes qualifying subordinate liens and incorporates greater underwriting and loan type flexibility for small lenders' portfolio loans.

We believe the new definition strikes the overall right balance between tightening lending standards and ensuring broad and fair access to credit. By barring risky loan features like balloon and interest-only payments and negative amortization, the QRM definition excludes the loans that posed the greatest risk to mortgage market stability before the 2008 foreclosure crisis. Income, employment, and asset verification requirements will also exclude the risky low- and no- documentation loans that predominated in subprime lending before the crisis. Lenders wishing to originate such loans will still be able to do so, but securities containing non-QRM loans will be subject to the rule's 5% risk retention requirement, which should promote greater risk monitoring by investors. Overall, these requirements will go a long way toward promoting responsible lending and protecting consumers from risky and abusive lending practices.

Incorporate the Ability-to-Repay Exemption for Affordable Lending Programs into the Credit Risk Retention Rule

As the U.S. housing market recovers from the foreclosure crisis and adapts to new regulations, HFAs, CDFIs, and nonprofit lenders have come to the forefront as organizations offering

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[2] Quercia, Roberto and Reid, Carolina. Risk, Access and the QRM Reproposal. Center for Community Capital, September 2013. http://ccc.sites.unc.edu/files/2013/10/Risk-Access-and-QRM-9-13.pdf.

affordable, safe credit to homebuyers and communities that are not typically served by the conventional mortgage market. Lending programs offered through these organizations play a key role in neighborhood stabilization and community development, and will continue to be a key source of affordable credit for first-time homebuyers and low- and median-income borrowers. CDFIs almost exclusively target underserved communities with affordable, sustainable credit – a study of a sample of CDFIs in six cities revealed that 86.6% of borrowers receiving loans from these CDFIs earned below 80% of area median income, 66.5% belonged to a racial minority group, and 55% were female.[3] CDFI loan funds in particular have a proven track record of relatively low default and delinquency rates, even as they expanded their loan portfolios by 76% on average after 2006. At the height of the foreclosure crisis in 2009, CDFIs claimed an average portfolio-at-risk (percent of loans 90+ days delinquent) of 2%, compared to 9.7% for the mortgage industry as a whole and 30.1% for subprime mortgages.[4]

Affordable lending programs offered through HFAs, CDFIs, and nonprofit lenders often employ flexible underwriting standards that consider an individual borrower's unique circumstances when determining ability to repay, and use homebuyer education and housing counseling to support homeowners throughout the process of purchasing and paying down a mortgage. In several instances, these standards allow affordable lenders to originate loans that fall outside the bounds specified by the QM and proposed QRM definition. For example, Aura Mortgage Advisors LLC, a subsidiary of HPN member Boston Community Capital (BCC), has originated loans for borrowers with DTI ratios up to 48% - higher than the 43% DTI limit specified in the QM definition - as part of the SUN initiative, which acquires distressed properties and sells them back to existing owners and tenants.

In addition to designing innovative mortgage products for low- and moderate- income borrowers, HPN and its members have worked to create innovative and sustainable investment products, which are increasingly important tools for supporting and expanding affordable lending programs.[5] For example, in May 2013, BCC announced a new initiative to raise capital through investments backed by performing SUN mortgage loans; since its launch in May 2013, this initiative has secured over $35 million in investment capital. However, under the current proposed risk retention/QRM rule, securities backed by loans that do not conform to QRM standards will be subject to credit risk retention requirements. As HFAs, CDFIs, and nonprofit creditors introduce innovative products to assist in expanding their lending programs, they may find that risk retention requirements are a significant barrier to attracting affordable and sustainable sources of investment capital.

The CFPB amended its Ability-to-Repay/QM rule to exempt loans originated by HFAs, Treasury-Certified CDFIs, and certain nonprofit lenders[6] in order to ensure that the additional

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[3] Mayer, Temkin, and Chang. An Analysis of Successful CDFI Mortgage Lending Strategies in Six Cities. U.S Department of the Treasury, CDFI Fund – Research Initiative.

[4] Swack, Northrup, and Hangen. CDFI Industry Analysis – Summary Report. The Carsey Institute, 2012. http://carseyinstitute.unh.edu/publications/Report-Swack-CDFI-Industry-Analysis.pdf.

[5] Dickenstein, Buxbaum, Thomas, and McLaughlin. The Role of CDFIs in Addressing the Subprime Mortgage Market: A Case Analysis of New England. October 2008. U.S Department of the Treasury, CDFI Fund – Research Initiative.

[6] Nonprofit lenders exempted from Ability-to-Repay regulations must be creditors designated as nonprofit organizations under Section 501(c)(3) of the Internal Revenue Code that extend credit no more than 200 times annually, provide credit only to low-to-moderate income consumers as established pursuant to Section 102 of the

costs associated with complying with new mortgage regulations do not strain the ability of community-focused lenders to raise sustainable capital and expand their lending activities. We urge regulators to align the credit risk retention/QRM rule with Ability-to-Repay/QM standards by building in an exemption for HFAs, Treasury-approved CDFIs, and nonprofit lenders meeting the QM exemption criteria. This exemption would help to support a key source of affordable and sustainable credit for underserved community and low- and median- income borrowers. The exemption would also ensure that the ability-to-repay and credit risk retention rules do not contradict each other in practice for affordable lenders; under the current proposed rule, these lenders would be bound by QM standards for loans intended for sale or securitization, but would be exempt from QM standards for loans held in portfolio.

The 'QM-Plus' Definition Would Exclude Most Low- and Median- Income Borrowers from the Private Mortgage Market

The alternative 'QM-Plus' definition in the re-proposed rule would impose onerous requirements on creditworthy borrowers, including a 30% down-payment requirement with no subordinate liens and strict credit history requirements. An analysis of PLS, Freddie Mac, and bank portfolio loans by Ellen Seidman, Laurie Goodman, and Jun Zhu from the Urban Institute shows that only 15% of PLS loans and 10% of Freddie Mac loans originated after 2009 would have qualified as QRMs under the 'QM-Plus' definition, compared to 75% and 84% respectively for the QRM=QM definition.[7]

If adopted, this definition would create a standard for mortgages in the private market that would effectively exclude many, if not most, moderate-income and minority borrowers from the conventional market. Non-qualifying loans would be subject to risk retention requirements, which would increase the cost of credit for those loans or even slow the return of private capital into the mortgage market.

For these reasons, HPN urges the agencies to adopt a QRM definition that is aligned with the existing QM requirements, rather than the onerous 'QM-Plus' definition outlined in the re-proposed rule.

Conclusion

Thank you, in advance, for your consideration of these comments. Please contact Paul Weech at weech@housingpartnership.net or at 202-677-4292 if you would like more information on our views or to explore any of the issues raised by this letter in more detail.

Sincerely,

Housing and Community Development Act of 1974, and follow their own written procedures to determine that consumers have a reasonable ability to repay their loans

[7] Goodman, Seidman, and Zhu. QRM vs. Alternative QRM: Quantifying the Comparison. Urban Institute Metrotrends Blog. http://blog.metrotrends.org/2013/10/qrm-vs-alternative-qrm-quantifying-comparison/

Paul Weech

Paul Weech

Executive Vice President for Policy and External Affairs

Housing Partnership Network