NCSHA

October 30, 2013

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219
Re: RIN 1557-AD40

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: RIN 7100-AD70

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Re: RIN 3064-AD74

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

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410-0500
Re: RIN 2501-AD53

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission 100 F Street, NE
Washington, DC 20549-1090
Re: RIN 3235-AK96

To Whom It May Concern:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on the revised proposed rule implementing the risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

NCSHA strongly supports the proposed rule's exemption for all asset-backed securities "issued or guaranteed" by state governments and their instrumentalities, including those issued by HFAs. However, we urge you clarify that this exemption applies to all securities issued by HFAs and other state government agencies and backed by loans financed by HFAs. This clarification would provide needed certainty to HFAs and other market participants and resolve any question about whether the proposed rule could be construed as not providing an exemption for all securities issued by HFAs.

We also strongly commend you for aligning the definition of "qualified residential mortgage" (QRM) with the definition of "qualified mortgage" (QM) implemented in the Consumer Financial Protection Bureau's (CFPB) final Ability-to-Repay/Qualified Mortgage rule. We recommend that you further align the QRM definition with the QM definition by automatically classifying all HFA loans as QRM. Finally, we also urge you to withdraw the proposed alternative QRM definition that would require a minimum 30 percent down payment.

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, HFAs share a common mission of providing affordable housing help to those who need it.

To support their affordable housing mission, HFAs issue mostly tax-exempt private activity bonds (Housing Bonds) to finance affordable housing for home buyers and renters. However, HFAs have recently begun implementing a number of new financing strategies to fund their single-family programs, including the use of mortgage-backed securities (MBS) and pass-through securities. HFAs also administer a wide range of affordable housing and community development programs, including tax-exempt housing bonds, HOME, down payment assistance, homebuyer education, loan servicing, the Low Income Housing Tax Credit, Section 8, homeless assistance programs, and state housing trust funds.

Clarify Scope of Municipal Securities Exemption to Include All HFA Securities

The revised proposed rule would exempt all asset-backed securities (ABS) "issued or guaranteed by a State…or by any public instrumentality of a state." As HFAs are public-purpose organizations chartered by state governments, this exemption would appear to apply to all tax-exempt housing bonds and other ABS issued or guaranteed by HFAs, whether they are tax-exempt bonds or alternative financing strategies, such as MBS or pass-through bond structures.

However, there are still some questions as to whether the rule would extend to all ABS issued or guaranteed by HFAs. As public-purpose organizations, HFAs often lack the infrastructure and resources necessary to carry out the entire securitization process in-house. Consequently, many HFAs use private servicing firms to both service and securitize their loans. Under such arrangements, the master servicer handles many of the tasks associated with securitization, including aggregating the mortgages and underwriting the sale, but the security is still backed by HFA-financed mortgage loans. Other HFAs use a variety of similar arrangements with other third parties such as underwriters and other financial services firms.

While we believe that securities issued under such arrangements still qualify for an exemption, since they are still backed by HFA loans, we recommend the rule be amended to provide more clarity on this point to give HFAs and their partners certainty. Several of our members have told us that their servicers and other business partners are concerned that, should they continue to originate securities under such arrangements, they will have to comply with the risk retention requirements.

If HFAs utilizing these structures are forced to comply with the risk retention requirements, it will make the loans issued under such structures more costly and less available to the low- and moderate-income consumers HFAs are committed to serve. This is particularly concerning because many HFAs have adopted these new financing techniques successfully in recent years to ensure that they could continue to fulfill their affordable housing mission during a tough economic environment, when it was difficult for them to finance lower interest mortgages with tax-exempt bonds. In addition, many HFAs have also used such programs to reach new borrowers they cannot reach through their bond programs, such as low- and moderate-income non-first-time homebuyers.

Classify All HFA Loan Products as QRMs

By proposing to synchronize the definitions of QRM and QM, the proposed rule helps to strike a balance between increasing protection for investors and ensuring a liquid housing finance market capable of providing affordable home financing to creditworthy borrowers. However, we are greatly concerned with how the proposed definition would explicitly exclude

HFA loans from being defined as QRMs, based on the exemption they received from CFPB's Ability-to-Repay/Qualified Mortgage rule.

The proposed rule notes that, because they do not fall under the definition of QM in CFPB's final rule, HFA loans would be expressly excluded from the definition of QRM. This is a significant misapplication of CFPB's rule. CFPB did not exclude HFA loans from the definition of QM because it felt they were unsafe or should not be afforded the legal protections afforded QM loans. Rather, CFPB granted HFAs an exemption from the Ability-to-Repay/Qualified Mortgage standards because it recognized that, given HFAs' strong track record of responsible lending to low- and moderate-income borrowers, forcing them to comply with requirements of the Ability-to-Repay rule would provide little benefit to consumers and might limit lower-income borrowers' access to affordable home lending.

In justifying its decision to exempt HFA loans from the Ability-to-Repay rule, CFPB noted that HFAs already follow strict, responsible underwriting standards and that, "[A]s HFAs extend credit to promote long-term housing stability, rather than for profit, HFAs generally extend credit after performing a complex and lengthy analysis of a consumer's ability to repay." CFPB also cited the strong relative performance of HFA loans and expressed concern that the Ability-to-Repay requirements might jeopardize HFAs' ability to provide low- and moderate-income borrowers with loans that meet their unique credit circumstances, that HFAs may lack the resources needed to comply with the rules, and that private lenders might be less inclined to work with HFA programs if they have to comply with both HFA standards and the Ability-to-Repay requirements.

Denying HFA loans from QRM advantages would have the reverse effect than the one CFPB intended when it exempted HFA loans from the QM definition and could harm HFAs' ability to extend responsible affordable home lending to low- and moderate-income and other credit-worthy borrowers. If the purpose of aligning QRM with QM is to ensure that the QRM rule does not reduce the availability of affordable housing credit for all borrowers, it would then follow that those loan products CFPB chose to exempt from the QM requirements because they felt that including them in the rule would result in fewer choices for consumers should be either exempt from the risk retention requirements or be classified as QRMs automatically.

In addition, the strong performance of HFA loans demonstrates that it is not necessary or appropriate to exclude them from QRM status to protect investors. A limited study NCSHA conducted in 2011 of the relative performance of HFA-financed and non-HFA-financed loans insured by FHA found that, in a large majority of the states, HFA-financed loans had lower long-term delinquency and foreclosure rates than non-HFA loans. In addition, a limited review of HFA loan data conducted by Fannie Mae, for example, demonstrated that HFA-financed loans performed significantly better than other Fannie Mae affordable housing loans.

While, as mentioned above, we believe that most HFA loans will be exempt from the QRM requirements through the exemption for municipal ABS, HFAs will sometimes finance alternative mortgages through other structures that are not clearly exempt from the rule. For example, HFAs might finance mortgages through legal structures, including securitization trusts or warehouse lines of credit, which may not technically be considered "issued or guaranteed" by the HFAs. They might also finance mortgages with federal or state funds or their own fund balances without securitizing such mortgages.

If neither QRM-eligible nor exempt from the risk retention requirements, loans financed under these structures could be more costly and less available, reducing homeownership access for the low- and moderate-income families HFAs traditionally serve. Including all HFA loans as QRM loans or exempting them from risk retention will allow HFAs to continue responsibly serving underserved borrowers, while also maintaining consistency between QRM and QM.

Reject Alternative QRM Definition

NCSHA strongly urges that the alternative QRM definition described in the proposed rule, which would require a minimum 30 percent down payment in order for a mortgage to be considered a QRM, be rejected and withdrawn. Requiring such a high down payment for a loan to be considered a QRM would restrict the affordability and accessibility of housing credit for all but the most wealthy borrowers.

It would have a particularly negative impact on first-time home buyers. According to data compiled by the National Association of REALTORS®, 92 percent of first-time home buyers paid less than a 30 percent down payment from 2006-2012. Imposing such a large down payment requirement will deny many creditworthy young people the opportunity to purchase a home.

Further, as HFAs have long demonstrated, a large down payment is not necessary to guarantee strong loan performance. Low down payment loans, made responsibly, perform just as well as similar affordable loans.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives