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Office of the Comptroller of the Currency
RIN 1557–AD40

Federal Reserve System
RIN 7100–AD70

Federal Deposit Insurance Corporation
RIN 3064–AD74

Federal Housing Finance Agency
RIN 2590–AA43

Securities and Exchange Commission
RIN 3235–AK96

Department of Housing and Urban Development
RIN 2501–AD53

RE: "Credit Risk Retention"

To Whom It May Concern:

This comment letter is submitted to the Federal banking agencies[1] by TransUnion LLC ("TransUnion") in response to the Notice of Proposed Rulemaking ("NPR") published in the *Federal Register* on September 20, 2013 to implement the credit risk retention requirements in Section 941 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("*Dodd-Frank Act*").[2]

TransUnion is a one of three consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis, as described in Section 603(p) of the *Fair Credit Reporting Act*. We have operations in the United States, Africa, Canada, Latin America, East Asia and India and provide services in 33 countries. TransUnion has access to consumer credit information supplied by data furnishers on substantially all of the credit active consumers in the

[1] The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development.
[2] *See* Credit Risk Retention, 78 Fed. Reg. 57,928 (September 20, 2013).

United States. As part of its business model TransUnion develops and sells credit scores derived from information contained within a consumer report to financial institutions. These credit scores may be proprietary to TransUnion or they may be proprietary algorithms of other third-party developers, such as VantageScore or FICO. TransUnion is a part owner of VantageScore Solutions, LLC, the owner of VantageScore.

Section 941 of the *Dodd-Frank Act* generally requires the agencies to jointly adopt regulations requiring "securitizers" to retain not less than a 5% unhedged portion of the credit risk for any asset that the securitizer, through the issuance of an "asset-backed security," transfers, sells or conveys to a third party, subject to various exemptions and exceptions, including an exemption for certain asset-backed securities that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages" ("QRMs").

While the 122-page NPR provides the public with the opportunity to comment on more than one hundred enumerated questions, in submitting this letter TransUnion is limiting its focus to a single narrow but extremely important concern that we believe may have been inadvertently overlooked by the authors of the NPR and is likely to be overlooked by many of those submitting public comment.

Question # 90 asks: "**Does the proposal reasonably balance the goals of helping ensure high quality underwriting and appropriate risk management, on the one hand, and the public interest in continuing access to credit by creditworthy borrowers, on the other?**"[3]

TransUnion believes that the proposal fails to appropriately balance the goal of ensuring "high quality underwriting" with the public's interest in "access to credit by creditworthy borrowers." We believe this failure results not from any specific intent, but from the decision to align the definition of a Qualified Residential Mortgage ("QRM") in this rulemaking proceeding with the definition of a "Qualified Mortgage" as that term was defined by the Consumer Financial Protection Bureau ("CFPB") when it promulgated the Ability-to-Repay rule last January.

In promulgating its Ability-to-Repay rule, the CFPB said that a loan could meet the definition of a Qualified Mortgage ("QM") if it is "eligible for purchase or guarantee by Fannie Mae or Freddie Mac"[4]. However, Fannie Mae and Freddie Mac are explicit in requiring that loans be underwritten using FICO scores in order to meet their underwriting guidelines[5]. If, as the NPR proposes, the definition of QRM is to be aligned with the definition of QM and the GSEs' underwriting requirements are to remain unchanged, the six agencies responsible for promulgating the Credit Risk Retention rule will help to perpetuate the requirement that these loans be underwritten using FICO scores – which is directly contrary to what the six agencies said in the preamble to the NPR, which states:

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[3] 78 Fed. Reg. 57,992.

[4] *See* Ability-to-Repay, 78 Fed. Reg. 6,535 (January 30, 2013).

[5] *See* Fannie Mae's "Single Family Selling Guide": https://www.fanniemae.com/content/guide/sel092413.pdf; Freddie Mac's "Single-Family Seller/Servicer Guide, Volume 1": http://www.freddiemac.com/sell/guide/.

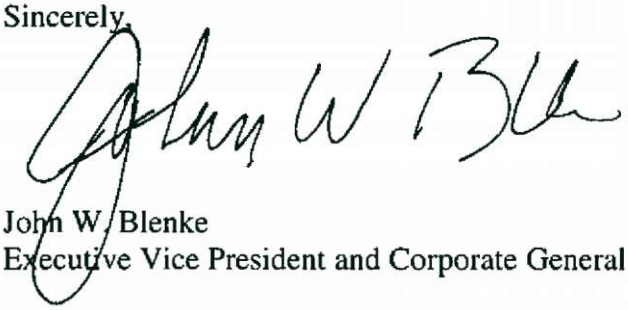
> "*... the agencies do not believe it is appropriate to establish regulatory requirements that use a specific credit scoring product from a private company, especially one not subject to any government oversight ...*"[6]

Would the public's interest in "access to credit by creditworthy borrowers" be advanced by elevating the role played by "a specific credit scoring product" as contemplated by the proposed QRM rule? Seldom is the public interest advanced by locking-out competition and rarely does the public gain when regulators cede to a single "private company" what amounts to rulemaking authority. As an active participant in the consumer credit marketplace, TransUnion can affirm that the best way to ensure "continuing access to credit by creditworthy borrowers" is to not just allow but to encourage competition in credit scoring. Competition will not only ensure continued access but will identify additional creditworthy borrowers who under legacy systems may not be able to be scored because they are thin-file applicants or new entrants into the consumer credit marketplace. Specifically, the VantageScore model has been recognized as able to score more of these individuals[7].

There are various ways as regulators you can address this unanticipated consequence of aligning the definition of QRM with QM. We believe that in this case the simplest solution is also the best solution: Since the GSEs are not only subject to direct regulation by the Federal Housing Finance Agency – one of the six agencies participating in this rulemaking – but also are subject to FHFA's directives as conservator, we believe that the simplest and best solution would be to have FHFA declare that on or before January 10, 2014, the GSEs will be required to accept loans underwritten using other validated models in addition to FICO. That would strike a reasonable balance between the goals of helping ensure high quality underwriting and appropriate risk management, on the one hand, and the public interest in continuing access to credit by creditworthy borrowers, on the other.

Thank you for the opportunity to comment on this matter.

Sincerely,



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[6] *See* Credit Risk Retention, 78 Fed. Reg. 57,985.

[7] *See* : http://thescore.vantagescore.com/article/81; http://www.transunion.com/personal-credit/credit-reports/vantage-score.page; http://www.gobankingrates.com/credit/is-fico-still-the-standard-in-credit-scoring/; and http://www.smartcredit.com/blog/2013/04/25/do-you-have-a-thin-credit-report/ :