Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219
Re: RIN 1557-AD40 [Docket No. OCC-2013-0010]

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
RIN 3235-AK96 [File No. S7-14-11]

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution, NW
Washington, DC 20551
RIN 7100-AD-70 [Docket No. R-1411]

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

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

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

Re: Credit Risk Retention
Due: October 30, 2013

OCC RIN 1557-AD40 [Docket No OCC-2013-0010]

FRB RIN 7100-AD-70 [Docket No. R-1411]

FDIC RIN 3064-AD74

SEC RIN 3235-AK96 [File No. S7-14-11]

FHFA RIN 2590-AA43

HUD RIN 2501-AD53

Dear Sir or Madam:

AARP[1] appreciates the opportunity to comment on the latest version of the Credit Risk Retention proposed rule, Vol. 78, Fed. Reg. No. 183 (September 20, 2013). The agencies are

[1] AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice, and control in ways that are beneficial and affordable to them and society as a whole. We produce AARP The Magazine, AARP Bulletin, AARP Viva, NRTA Live and Learn, and provide information via our website, www.aarp.org. AARP publications reach more households than any other publication in the United States. AARP advocates for policies that enhance and protect the economic security of individuals.

required to promulgate risk retention rules and to define Qualified Residential Mortgage (QRM) requirements as specified in Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In this letter, we focus only on the QRM definition and related questions.

In August 2011, we submitted comments on the original proposed rules regarding the QRM definition. In that letter, we expressed our concern that the QRM definition as proposed was too strict and would likely lead to higher borrowing costs for many creditworthy borrowers and would limit access to mortgage credit for a large proportion of low- and middle-income borrowers. We are pleased that the agencies decided to re-propose the QRM rule.

A liquid and stable housing market is vital to the financial security of American families, and particularly, to older families. Approximately 78 percent of households age 50 and older are homeowners.[2] For many older people, their home is their most valuable asset. Access to mortgage financing enables families to buy and sell homes with relative ease. Younger families welcome the opportunity to build wealth through equity accumulation over time. Older families often rely on their accumulated home equity to finance their needs in retirement and to pay for long term services and supports.

Defining the QRM represents an important step in returning some degree of certainty to the mortgage finance market. In doing so, consumers will be able to access mortgage credit more readily, and lenders will be more willing to provide that credit. To that end, we offer the following comments.

Background on the Current Proposal

The agencies propose equating the QRM definition to the QM definition. The Consumer Financial Protection Bureau (CFPB) has defined a QM loan as meeting the following requirements:

1) Regular periodic payments that are substantially equal;
2) No negative amortization, interest only, or balloon features;
3) Maximum loan term of 30 years;
4) Total points and fees that do not exceed 3 percent of the total loan amount, or the applicable amounts specified in the Final QM rule for small loans up to $100,000;
5) Payments underwritten using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment is due;
6) Considerations and verification of the consumer's income and assets, including current employment status if relied upon, and current debt obligations, mortgage-related obligations, alimony, and child support; and
7) Total debt-to-income ratio that does not exceed 43 percent.

The CFPB also included a second temporary QM definition that the agencies propose including in the QRM definition that states a loan must:

1) Meet the requirements of numbers 1, 2, 3, and 4 above.
2) Be eligible for purchase, guarantee, or insurance by an Enterprise, HUD, the Veterans Administration, U.S. Department of Agriculture, or Rural Housing Service.

Lenders that make QM loans that are not higher-priced qualify for a safe harbor, meaning they are presumed to be in compliance with the ability to repay requirement. Lenders that make higher-priced loans receive a rebuttable presumption of compliance when making a QM loan.

[2] 2009 American Housing Survey, U.S. Census Bureau.

However, both non-higher priced and higher-priced loans would be eligible as QRMs without distinction, and could be pooled together in the same securitization.

The CFPB also included several additional QM definitions to facilitate credit offered by certain small creditors. The agencies propose that these will also meet the QRM criteria.

Loan types included under the QM proposal include:

- Any closed-end loan secured by any dwelling—including home purchases, refinances, second liens, and second or vacation homes.

Another important aspect of the current proposal is what ***is not*** included in the QRM definition. Specifically, the current proposal does not include:

- Requirements for an LTV ratio;
- Standards related to a borrower's credit history;
- Written appraisal requirements;
- Assumability requirements; or
- Servicing standards.

Alternative Proposal: QM-Plus

The agencies also seek comment on an alternative QRM approach: the QM-Plus. In addition to the QM criteria defined by the CFPB, they would add four additional factors:

- Core QM criteria: A QRM would be required to meet the CFPB QM criteria. The QM-Plus would draw no distinction between non-higher priced and higher-priced loans. However, the QM-plus would exclude GSE-eligible loans, small creditor exceptions and balloon loan provisions.
- QRM would only apply to one to four family units that are principal dwellings. Vacation and second homes and investor properties would not be eligible.
- All QRMs would be first-lien mortgages—no piggy back loans would be allowed.
- Credit History: Borrower must not be 30 or more days past due on any debt obligation and not 60 or more days past due on any debt obligation within the past 24 months. Within the past 36 months, no bankruptcy or judgment for collection of an unpaid debt, no personal property repossession, no one to four family property foreclosure, and no short sale or deed in lieu of foreclosure.
- Loan-to-Value Ratio: LTV at closing cannot exceed 70 percent. Junior liens only permitted for non-purchase transactions, but must meet combined 70 percent LTV requirement. Home Equity Line of Credit's (HELOC) are to be included assuming full draw and used in LTV calculation.

Responses to Questions

89(a). Is the agencies' approach to considering the QRM definition, as described above, appropriate?

Yes, we believe that the approach to the QRM definition is appropriate, and that it is an improvement over the prior proposal.

89(b). Why or why not?

There are several benefits that will result from the broader definition: more creditworthy borrowers will qualify for lower-cost loans; securitization markets will be more liquid as a result of the higher loan volume; risks will be mitigated since loans will be well-underwritten and documented; and toxic loan products that harmed consumers and the housing market will be prohibited from inclusion in the QM or QRM definition. In addition, compliance costs will be minimized as lenders and securitizers will find it easier to work with a single definition.

89(c). What other factors or circumstances should the agencies take into consideration in defining QRM?

The removal of the LTV ratio requirements was unexpected. We did not oppose LTV as a factor for consideration, but rather support the use of private mortgage insurance for borrowers who have a downpayment of less than 20 percent. By removing the LTV ratio from consideration and also allowing piggyback loans, we are concerned that additional risk is being introduced.[3]

90. 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?

Yes, we believe the proposal provides a reasonable balance between risk management and access to credit. The QM definition requires loans to be fully documented and the ability to repay to be demonstrated. Careful underwriting and the prohibition of toxic products—such as negative amortization loans, hybrid ARMs, and no documentation loans, provide an appropriate safeguard against risk. Although default risk can never be fully eliminated, responsible underwriting can minimize this risk while also providing access to financing for creditworthy borrowers.

91. Will the proposal, if adopted, likely have a significant effect on the availability of credit? Please provide data supporting the proffered view.

Yes, we believe there would be a significant effect on the availability of credit, and that effect would be to make lower-cost loans available to a wider range of borrowers. Research conducted by the UNC Center for Community Capital found that using QM requirements alone nearly cut the default rate in half—from 11 percent to 5.8 percent—based on a sample of 19.5 million loans originated between 2000 and 2008.[4] Although that research found that imposing additional down payment or credit score requirements would reduce default rates further, but not by much, the volume of currently performing loans that would have been eliminated by these requirements is very large. For example, requiring a 10 percent down payment would reduce the default rate to 4.7 percent (down from 5.8 percent), but nearly one-third of QM-eligible performing loans would have been excluded. The research also found that down payment requirements would hit lower-wealth borrowers and would restrict access to credit for 60 percent

[3] During the height of the housing boom, some borrowers took out simultaneous second liens to finance their downpayment and to avoid having to purchase private mortgage insurance. This increases risk of loss to lenders since they do not benefit from insurance coverage in the event of borrower default.
[4] Carolina Reid and Roberto G. Quercia, *Risk, Access and the QRM Reproposal*, (Chapel Hill, NC: UNC Center for Community Capital, September 2013).

of African American and 50 percent of Latino borrowers who are currently successful homeowners.[5]

92(a). Is the proposed scope of the definition of QRM, which would include loans, secured by subordinate liens, appropriate?

We are concerned that inclusion of second liens may not be appropriate. By removing the LTV ratio from consideration and also allowing piggyback loans, we are concerned that additional risk is being introduced. As stated above, we are concerned that use of second liens to avoid private mortgage insurance may not be a prudent approach for a QM or QRM loan.

However, some borrowers obtain "soft seconds," which are second liens obtained at closing to assist borrowers with down payments and are usually provided by housing assistance organizations. Borrowers must meet special requirements to qualify for these loans and housing counseling is usually required. Often these loans do not have to be repaid until later, or require interest only payments for the first several years of a loan, so they do not represent a burden on the borrower at the onset of the loan. We believe these second lien arrangements support homeownership in a responsible way and should be included within the QRM definition.

97(a). Does the QM-plus approach have benefits that exceed the benefits of the approach discussed above that aligns QRM with QM? For example, would the QM-plus approach favorably alter the balance of incentives for extending credit that may not be met by the QM definition approach or the QRM approach previously proposed?

We do not believe that the QM-Plus approach provides benefits that exceed those of equating QM with QRM. It is hard to see how the QM-Plus approach would favorably alter the balance of incentives for extending credit. The LTV requirement of 70 percent is even more stringent than the 80 percent requirement proposed by the agencies in 2011. Commenters overwhelmingly stated that the LTV requirement was too restrictive and would cut off access to many creditworthy borrowers. In fact, for a 20 percent down payment, for every one foreclosure prevented, ten creditworthy borrowers who are current on their mortgages would have been excluded from the market.[6] The effect of a 30 percent down payment is that even more borrowers would be excluded from low-cost mortgage credit in return for a minimal reduction in the default rate.

97(b). Would the QM-plus approach have benefits for financial stability?

It is difficult to see how financial stability is enhanced by requiring more borrowers to pay higher prices for credit. The more likely result would be fewer borrowers will qualify for loans at any price and tighter credit market conditions will result. This will lead to further decreases in housing market liquidity, as home buying and selling becomes more difficult, and ultimately this will depress house prices.

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[5] Roberto G. Quercia, Lei Ding and Carolina Reid, *Balancing Risk and Access: Underwriting Standards and Qualified Residential Mortgages*, (Chapel Hill, NC: UNC Center for Community Capital and Center for Responsible Lending, January 2012). These results were obtained without applying the debt-to-income (DTI) cutoff because the study was completed before the QM definition was finalized. Incorporating the DTI limit would have led to a lower QM-eligible default rate.

[6] Reid and Quercia, 2013.

98. Would the QM-plus approach have greater costs, for example in decreased access to mortgage credit, higher priced credit, or increased regulatory burden?

The QM-Plus approach would greatly decrease access to mortgage credit for many borrowers, particularly lower income and minority borrowers. These borrowers would be forced to pay more for credit if they can qualify. A 30 percent down payment would eliminate hundreds of thousands—and possibly millions—of creditworthy borrowers from accessing good quality, low cost mortgage loans. Compliance costs for lenders would increase as they would need additional systems to track and monitor QM-Plus loans in addition to QM loans.

Conclusion

In summary, AARP supports aligning the QRM definition with the QM definition. The stronger underwriting and ability to repay criteria, along with product limitations will provide reduced risk while also allowing access to mortgage financing for creditworthy borrowers. We do not think the alternative QM-Plus approach is reasonable and oppose the imposition of a 70 percent LTV requirement. Restricting access to credit for a broader range of borrowers will harm the housing market.

AARP appreciates the opportunity to offer our comments on the QRM definition of the risk retention proposal. Please contact Cristina Martin-Firvida at 202-434-6194 if you have any additional questions.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs