CBA | CONSUMER BANKERS ASSOCIATION

The Voice of the Retail Banking Industry

October 30, 2013

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street, SW,
Suite 3E-218 - Mail Stop 9W-11
Washington, DC 20219
Docket Number OCC-2013-0010

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn.: Jennifer J. Johnson, Secretary
Docket No. R-1411

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

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

Federal Housing Finance Agency
Constitution Center (OGC)
Eighth Floor
400 7th Street, SW
Washington, DC 20524
Attn.: Alfred M. Pollard, General Counsel
Comments/RIN 2590-AA43

Department of Housing and Urban Development
Regulations Division
Office of General Counsel
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
Docket Number FR-5504-P-01

Re: Credit Risk Retention Proposed Rule

Dear Sirs or Madams:

The Consumer Bankers Association (CBA)[1] appreciates the opportunity to comment on the credit risk retention proposal issued on August 28, 2013 by the Board of Governors

[1] The Consumer Bankers Association ("CBA") is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

of the Federal Reserve System, the Department of Housing and Urban Development, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Securities and Exchange Commission (the "Agencies"). This proposal is a revision to the one the Agencies issued in 2011 to implement the provisions of the credit risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that will be imposed on securitizers of asset-backed securities. As compared to the proposal issued in 2011, the current proposal from the Agencies would revise the definition of a qualified residential mortgage (QRM) that would be exempt from the Dodd-Frank Act five percent risk retention requirement, as well as make other changes to the 2011 proposal.

Summary of CBA's Comments

- CBA supports many of the changes the Agencies have made to the 2011 proposal, especially the provisions aligning the QRM definition with the qualified mortgage (QM) definition, as outlined in the QM final rule issued this past January by the Consumer Financial Protection Bureau (CFPB).
- However, HUD offers an "alternative approach" to the current proposal, which CBA opposes for the following reasons:
    - Imposing a 70 percent loan-to-value (LTV) ratio requirement under the alternative approach is unwarranted. Although loans with high LTV ratios may pose additional risks, these can be mitigated by a strong underwriting review process with appropriate levels of documentation.
    - A 70 percent LTV ratio requirement would provide significant barriers to achieving homeownership, especially for first time and low -to moderate-income borrowers.
    - Under this alternative approach, loans qualifying as QMs under the CFPB rules because they are eligible for government-sponsored enterprise (GSE) purchase would not qualify as a QRM. We urge HUD not to adopt this provision as the GSE secondary market will remain a significant component of the overall mortgage market for years to come.
    - CBA also opposes the provisions in the alternative approach that for purchase money loans, the collateral must be a first lien on the borrower's principal dwelling and there can be no other recorded or perfected liens of which the originator has knowledge.

Discussion

As compared to the 2011 proposed rule, the current proposal incorporates a number of changes to the QRM definition, as follows:

- A QRM would now be defined as a mortgage meeting the requirements for a QM, as defined by the CFPB in the QM rule issued this past January.
- Consistent with the definition, the QRM definition would require the total debt-to-income (DTI) ratio to not exceed 43 percent. This differs from the 2011 proposal, which would have required a front-end DTI of 28 percent and back-end ratio of 36 percent.
- The revised proposal eliminates the 20 percent down payment requirement that was included in the 2011 proposal.

The current proposal also outlines and requests comment on an alternative approach, which would add the following requirements to the QRM definition:

- A maximum 70 percent LTV ratio.
- For purchase money loans, the collateral must be a first lien on the borrower's principal dwelling and there could be no other recorded or perfected liens of which the originator has knowledge.
- For refinances, the LTV requirement must be met on a combined basis if there are junior liens.
- The lender must determine the borrower:
    - was not currently 30 or more days past due on any debt obligation.
    - had not been 60 or more days past due on any debt obligations within the preceding 24 months.
    - must not have, within the preceding 36 months, been a debtor in a bankruptcy proceeding or been subject to a judgment for collection of an unpaid debt.
    - must not have had, within the preceding 36 months, personal property repossessed, any one-to-four family property foreclosed upon, or engaged in a short sale or deed in lieu of foreclosure.
- Loans qualifying as QMs under the CFPB rules because they are eligible for GSE purchase or fall within the small creditor or balloon loan exceptions would not be QRMs.

CBA is pleased with many of the changes the Agencies have made to the 2011 proposal, especially the provisions aligning the QRM definition with the QM definition,

as outlined in the QM final rule issued this past January by the CFPB. However, CBA opposes the adoption of the alternative approach for the following reasons:

Imposing a Maximum 70 Percent LTV under the Alternative Approach is Unwarranted

CBA reiterates the industry's position, as outlined in numerous comment letters in response to the 2011 proposal, that LTV thresholds should not be included within the QRM definition. In our view, it is the quality of underwriting standards that is the primary factor in the rate of default, as opposed to an LTV or down payment requirement. Such a requirement is not required or suggested in the QRM provisions of the Dodd-Frank Act.

Although loans with high LTV ratios may pose additional risks, these can be mitigated by a strong underwriting review process with appropriate levels of documentation. The principal determinant in the rate of default is the quality of the overall underwriting standards, as opposed to a specific focus on an LTV or down payment requirement. Underwriting a residential mortgage is a process requiring solid data analysis on a wide variety of factors, as well as an accurate and complete verification of the borrower's financial situation. There are many factors in the loan process that need to be weighed and evaluated. Although the LTV ratio is one consideration when underwriting a loan, it should not be overemphasized as a significant contributor to loan performance by including a specific LTV requirement as part of the QRM rule.

Similar to the 20 percent down payment requirement included in the 2011 proposal, the alternative 70 percent LTV would provide significant barriers to achieving homeownership, especially for first time and low- to moderate-income borrowers. For these borrowers, complying with a 70 percent LTV threshold would generally require significant down payments that would take years, if not decades, to acquire. Although we agree with the primary goal of both the QRM and QM rules, which is to ensure loans are carefully underwritten, we reiterate that an LTV requirement should not be the significant factor in this underwriting process.

We certainly acknowledge that one effect of both the QRM and QM rules will be to deny borrowers mortgage loans they may have received before the recent financial crisis and this may be appropriate in many circumstances. However, it would be tragic if the result of a QRM rule with an LTV requirement was the denial of mortgage loans to those who would otherwise qualify under rigid underwriting standards, both for consumers who will be denied these loans and for the economy, which depends on a healthy mortgage market as it continues its recovery from the financial crisis.

Arguably, these borrowers could obtain loans that would not qualify as a QRM. However, non-QRM loans will be more costly for lenders to make, since these will require more capital, which will be passed on to the borrowers. Many lenders may not offer non-QRM loans. Even if government guaranteed and insured loans, including loans sold to Freddie Mac and Fannie Mae, would qualify as QRMs, these may also impose additional costs on consumers. The Federal Housing Administration is currently focused on achieving financial solvency and efforts are underway to reform Freddie Mac and Fannie Mae, both of which may lead to higher costs for borrowers.

As noted above, CBA appreciates and supports the current proposal, which aligns the QRM definition with the QM definition in the earlier CFPB rule. However, we respectively request HUD not adopt the 70 percent LTV provision in the alternative approach, or any other LTV level. The reasons against adopting an LTV requirement, as outlined above, apply regardless of any level HUD may consider.

Additional Concerns with the Alternative Approach

CBA has other concerns with the alternative approach, in addition to the imposition of a 70 percent LTV requirement. Under the alternative approach, loans qualifying as QMs under the CFPB rules because they are eligible for GSE purchase would not qualify as a QRM. We urge HUD not to adopt this provision. Although efforts to reform Freddie Mac and Fannie Mae are underway, the GSE secondary market will remain a significant component of the overall mortgage market for many years to come.

For this reason, it is essential that the QRM rule recognize this by maintaining this component of the QRM definition. It makes little sense for the government to continue with its significant involvement in the mortgage market through the GSEs in an effort to facilitate lending in an otherwise anemic economic environment, while another agency of the government takes action to interfere with this involvement by disqualifying loans sold to the GSEs under the QRM definition, as outlined in the alternative approach.

Another concern with the alternative approach is the requirement that for purchase money loans, the collateral must be a first lien on the borrower's principal dwelling and there can be no other recorded or perfected liens of which the originator has knowledge. Again, we support the current proposal in that it does not exclude secondary liens, which will facilitate lending to the benefit of both the borrower and the economy.

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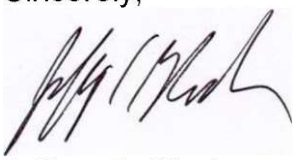
Thank you for the opportunity to comment on the current QRM proposal. If you have any questions or wish to discuss these issues further, please feel free to contact me at (202) 552-6366 or at jbloch@cbanet.org.

Sincerely,



Jeffrey P. Bloch
Associate General Counsel