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May 18, 2011

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Mr. Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
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Honorable Patrick Meehan
513 Cannon HOB
Washington, DC 20515

Re: Public Comment Concerning Section 941 of the Dodd-Frank Wall Street Reform
and Consumer Protection Act of 2010 ("Dodd-Frank Act") -
"Qualified Residential Mortgage Definition"

Dear Honorable Ladies and Gentlemen:

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On behalf of the hundreds of independent title insurance agents, independent regional title insurance underwriters and interested title insurance industry stakeholders who are members of our organization, please allow me to formally introduce you to the **National Association of Independent Land Title Agents (NAILTA)**. NAILTA was formed in November, 2008 by concerned independent title insurance agents from across the United States who are determined to foster transparency, promote education and understanding and preserve the value of the land title process.

NAILTA is the only land title association in the United States that comprises its complete organizational document on the issues affecting independent land title insurance agents and like-minded independent real estate settlement service providers. NAILTA is uniquely situated to provide feedback regarding your respective agency's efforts to define the term "Qualified Residential Mortgage" pursuant to the Dodd-Frank Act¹. NAILTA members are small business owners across the United States who depend upon the strength of the housing market to survive. Our members fear that, while well-intended checks on the financial markets are necessary and wise, an overly restrictive requirement for Qualified Residential Mortgages (QRMs) could negatively impact the already fragile housing market,; thereby making it more difficult for our members to maintain their small businesses.

The Dodd-Frank Act contains many important reforms to address the causes of the recent financial crisis. The congressional intent, according to sponsors of the QRM amendment, was to devise a standard that would incorporate the key features statistically associated with on-time payments of home loans. The law suggested such features as:

- Full documentation of borrower income and assets.
- Rigorous underwriting standards to ensure the borrower has the capacity to repay the debt.
- Avoidance of loan structures that increase the probability of default, such as balloon payments and negative amortization.
- Mortgage insurance and other credit enhancements.

Loans that could not meet the QRM standard would be deemed non-qualifying, and originators and securitization sponsors would be required to set aside their own capital at 5 percent of the loan amounts or pool balances to help cover potential losses. It is understood that loans in the non-qualifying category would likely carry higher interest rates than QRM qualified loans. Industry estimates put the differential, which results in a higher cost to borrowers, at somewhere between 75 and 300 basis points (0.75 percent to 3 percent.)

Obviously, these extra charges are not insignificant to the consumer and cumulatively are huge amounts. Thus, they threaten the ability for borrowers to find affordable mortgage loan programs. In most cases, a strict QRM down payment requirement would impair groups such as

¹Pub. L. 111-203, July 21, 2010.

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first-time homebuyers who might otherwise be in a position to buy a home or moderate-income minority groups who are currently credit worthy, but unable to produce the large down payment requirements sought by a rule soon to be developed by your agencies.

As a result, the inability to secure favorable mortgage loans will decrease the amount of title insurance, abstract and real estate settlement business that our members might otherwise engage in. NAILTA believes the QRM framework set forth in the statute specifically contemplated the inclusion of low down payment loans provided they have mortgage insurance or other forms of credit enhancement. One such form of credit enhancement that NAILTA believes is paramount to the appropriate policy purposes behind Dodd-Frank is the mandated use of title insurance and, most importantly, a requirement that such title insurance be provided by a non-affiliated, independent provider of such services. The latter requirement is especially important given the similarities between what happened to the financial markets in 2008 and what could happen, although on a smaller scale, from within the title insurance industry absent specific requirements for the independence of the provider of title services.

Title insurance is an important component of the risk minimization process in the provision of any residential mortgage loan. Title insurance provides valuable information concerning the status of the land title records pertinent to the real estate involved and allows lending institutions to have the assurance that their lending risk in the property is protected. Prior to 1980, the title insurance industry was strengthened by the fact that only title insurers or those with a vested interest in the insurance portion of a real estate transaction were involved in eliminating title risks. However, since 1980, lenders, real estate firms, mortgage companies, homebuilders, developers and other referral sources have infiltrated the title insurance industry through joint ventures called affiliated business arrangements (AfBAs) or controlled business arrangements (CBAs). Through the use of AfBAs and CBAs, the quality of the ultimate title insurance product has been seriously degraded. The potential for conflicts of interest and a lack of transparency in these types of controlled transactions is ripe for neglect and outright abuse by those in control, whose only motive is to increase their bottom line with little regard for the consumer or home buyer. Those who refer business to title insurance agencies and their underwriters now have an uncommon degree of control, whether actual or implied, over not only the profits of title insurers but also their underwriting practices. Additionally, the traditional role of the independent land title agent as the guardian of the integrity of the land record system is being eroded through the proliferation of those AfBA's and CBA's. As the best land record system in the world becomes less accurate and reliable the foundation of the U.S. economy becomes threatened. If business and consumers alike are less than certain as to who owns and owes what, commerce will be threatened at a very fundamental level. NAILTA is gravely concerned that this issue will be magnified by a rush to create policy under the QRM rule.

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For example, the largest title insurance underwriters that control nearly 90% of all title insurance business in the United States² have numerous joint title insurance ventures with some of the largest national lending institutions, like Wells Fargo, Bank of America and others, and as a result of those relationships have reduced the historical norms of proper title underwriting in an effort to build market share and drive smaller, independent title insurance agents and underwriters out of the market. In some cases, these joint ventures are accepting title insurance premiums without the benefit of a proper title search (sometimes none at all) while relying solely on credit reports or other sources to substitute for true title search and examination.

While title insurance is certainly a helpful tool of risk elimination in the financial market, the wrong kind of title insurance provided by AfBAs or CBAs with no interest in the health or welfare of the title insurance industry would be a catastrophe. NAILTA members are those who exhibit the highest standards of title insuring practices in the United States. Our members include some of the oldest and most competent title insurance agencies and most respected regional title insurance underwriters in the country. A QRM proposal that would require title insurance for QRM and non-QRM mortgage loans and mandate the independence of the provider of that title insurance would be an endorsement of the highest standards and practices that the title insurance industry could provide.

We have previously worked with the Government Accounting Office (GAO), testified before the National Association of Insurance Commissioners, the Pennsylvania Insurance Commission and been interviewed by representatives of the Treasury Department on these and other pertinent issues. We are regularly communicating with legislators and regulators to assist in returning the title closing process to one of independence, transparency and integrity.

We recognize the short time frame for consideration of public comment and drafting of a final rule. Therefore, we welcome the opportunity to expand upon the contents of this correspondence through additional comments or questions. Please feel free to reach me at my contact information listed below. On behalf of NAILTA, I look forward to hearing from you all and working with you to ensure the strength and vitality of our nation's housing market.

Respectfully,

Charles W. Proctor, III, J.D., C.L.T.P.

President

cc: NAILTA Board Members
NAILTA Policy and Legal Affairs Committee

² First American Title Insurance Corporation, Old Republic National Title Corporation, Stewart Guaranty Company and Fidelity National Financial, Inc.