



Credit Union National Association

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Legislative & Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th St, SW
Washington, DC 20219

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F St, NE
Washington, DC 20549

Robert deV. Frierson, Secretary
Board of Governors,
Federal Reserve System
20th St and Constitution Ave, NW
Washington, DC 20245

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
400 7th St, SW
Washington, DC 20024

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th St, NW
Washington, DC 20429

Regulations, Office of General Counsel
Dept. of Housing & Urban Development
451 7th St, SW
Washington, DC 20410

Re: Interagency Credit Risk Retention Proposal

Dear Sirs and Madams:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed rule on credit risk retention, which was required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, and was issued jointly by the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development (referred to collectively as the agencies). Please note that the comments below are limited to the qualified residential mortgage (QRM) aspect of the broader credit risk retention proposal. By way of background, CUNA is the largest advocacy organization in the country for state and federal credit unions, which serve over 97 million members.

CUNA'S VIEWS ON THE PROPOSED RULE

CUNA Supports Proposal Overall But with Important Caveats

CUNA supports a fair and efficient secondary market with equitable access for lenders of all sizes and varying loan volumes. We also support strong oversight and supervision of securitizers to ensure the market will generally operate efficiently,



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despite an economic downturn, to support the needs and interests of borrowers, creditors, investors, and securitizers alike.

We believe the proposed QRM definition, which is identical to the Consumer Financial Protection Bureau's (CFPB) qualified mortgage (QM) definition, is a marked improvement from the agencies' original credit risk retention proposal that was issued in April 2011. 76 Fed. Reg. 24090 (April 29, 2011). We are generally encouraged by the changes from the 2011 proposal, which we strongly urged the agencies to revise in our August 1, 2011 comment letter. The 2011 proposal was far too restrictive, including a 20% down payment requirement and front-end and back-end debt-to-income (DTI) ratio requirements.

As discussed below, our overarching concern is that we do not think the QM/QRM should become the only type of mortgage that regulators will permit or that the secondary market will accommodate. However, absent some flexibility for creditors under this rule, that is precisely what we believe will happen.

Proposed Scope of QRM

Definition of "Residential Mortgage": The proposal would define "residential mortgage" by reference to the definition of "covered transaction" in the CFPB's Regulation Z. As such, a residential mortgage would mean a consumer credit transaction that is secured by a dwelling (including any real property attached to a dwelling) and any transaction that is exempt from the definition of covered transaction under Regulation Z. Under the proposal, a residential mortgage would include home equity lines of credit, reverse mortgages, mortgages secured by timeshares, and temporary loans.

While we agree that the proposal's definition of residential mortgage should be harmonized with the CFPB's rules on and related to QM to reduce compliance burdens and complexity, we nonetheless urge the regulators to do what they can to ensure non-QM loans can still be successfully originated and sold by creditors. We are very concerned that the unintended consequences of risk retention will be that potential borrowers with a DTI ratio of greater than 43%, who can nonetheless afford to repay their mortgage loan on a timely basis, will be left out of the home mortgage loan market and unable to fulfill their dreams of homeownership.

The CFPB's Director Richard Cordray has indicated his support for non-QM loans, and we urge the regulators to support this view.

One approach that would provide flexibility for creditors to continue originating non-QM/QRM loans would be to allow certain loans to qualify for a lower than 5% credit risk retention requirement. For example, mortgage loans that reflect a borrower's somewhat higher DTI levels, such as up to 50%, that are originated by creditors with low default and delinquency rates, should be allowed to qualify for a credit risk

retention level that is more than zero, the level for QM/QRMs, but less than 5%, such as 1%. The loans should be allowed to be included in QM/QRM pools and securitized in separate non-QM/QRM pools.

We are also concerned about disparate impact issues that we believe will inevitably develop because lenders are incentivized under the rule to generate only QM/QRM loans. The statement on disparate impact that the agencies issued October 22, 2013 is undoubtedly well intended, but few believe it will provide any practical relief or protection if a lender is challenged in court by a consumer who likely should have received a mortgage absent the DTI or other requirements.

Facilitating the sale of certain non-QM/QRM loans that meet criteria such as provisions we are recommending will help ensure that creditors will have a market to sell such loans without having to be subjected to the burden of the full 5% risk retention requirement. More important, it will mean that creditworthy borrowers that do not precisely fit the QM/QRM mold can still finance the purchase of a home on reasonable terms.

Types of Loans Eligible as QRMs: As noted above, the proposed QRM definition incorporates QM by reference, which excludes home equity lines of credit, reverse mortgages, mortgages secured by timeshares, and temporary loans.

However, while the QM definition is used as a basis for the QRM proposal, the current proposal expands the types of loans eligible as a QRM to include a closed-end loan secured by any dwelling (e.g., home purchase, refinances, home equity loans, and second or vacation homes) and not just principal dwellings. Additionally, subordinate liens would be eligible to qualify as a QRM, as long as they also meet the definition of QM.

We support expanding the types of loans eligible as QRMs. We appreciate the agencies' effort to address the overly restrictive scope of QRM included in the 2011 proposal, which limited a QRM to a closed-end, first-lien mortgage used to purchase or refinance a one-to-four family property, at least one of which is the borrower's principal dwelling. We believe the increased flexibility provided by expanding QRM will benefit a number of creditors and borrowers, who might otherwise be adversely affected by an overly narrow definition.

QMs that would Qualify as QRMs under the Proposal

Under the proposal, certain QMs would be eligible as QRMs, such as:

- *QMs Eligible for Sale, Guarantee, or Insurance:* The proposal provides that a QRM would include a residential mortgage loan that is eligible for purchase or guarantee by Fannie Mae or Freddie Mac, consistent with the treatment of these loans under the CFPB's Ability to Repay rule.

- *Higher-Priced and Non-Higher-Priced QMs:* Both higher-priced and non-higher-priced QMs would be eligible as QRMs, without distinction under the proposal, and could be pooled together in the same securitization.
- *QMs Originated by Small Creditors:* If a creditor meets the definition of a “small creditor” under the CFPB’s QM rule, that is, under \$2 billion in assets and originates fewer than 500 first mortgage loans per year, the general 43% DTI ratio requirement under the QM rule would not apply but these loans would be eligible for QRM status. However, the loans are subject to a 3-year portfolio requirement and cannot be sold during this period.
- *Balloon QMs Originated by Small Creditors:* Loans under this category would be eligible for QRM status under the proposal and the QM rule’s 3-year portfolio requirement would also be applicable.
- *Balloon QMs Originated by Creditors in Rural and Underserved Areas:* Loans made by small creditors that operate predominantly in rural or underserved areas would qualify as QRM loans, after the 3-year portfolio requirement is met.
- *No Credit History, Appraisal, Servicing, or LTV Ratio Requirements:* Unlike the 2011 proposal, the current proposal does not include a loan-to-value ratio requirement, standards relating to a borrower’s credit history, a written appraisal requirement, or any servicing standards. This is positive and we agree with this approach.

To promote and facilitate consistency and uniformity in the definitions of QM and QRM, we support the QM-related aspects of the proposal described above, but urge the agencies to work to address our concerns with the QM. We also urge the agencies to ensure stakeholders that in the event that changes are made to QM that would negate the benefits outlined above for QRMs, the agencies will update the QRM rule as necessary to preserve such benefits.

QM-Plus: Proposed Alternative to QRM

Although the agencies believe that the proposed approach of aligning QRM with QM is soundly based, they seek input on an alternative that was considered, but ultimately not selected as the preferred approach. The alternative, referred to as QM-Plus, would take the QM criteria as a starting point for the QRM definition, and then incorporate four additional standards.

For the reasons stated below, we strongly oppose the proposed QM-Plus alternative to QRM and urge the agencies to drop it, as we believe significantly fewer loans would qualify as a QRM and be exempt from risk retention under this alternative.

We specifically oppose the following aspects of QM-Plus, as their adoption would reduce the number of loans eligible for QRM status:

- A QRM would be required to meet the CFPB's core criteria for QM, including the requirements for product type, loan term, points and fees, underwriting, income and debt verification, and DTI. There would be no distinction between loans that fall within the CFPB's "safe harbor" versus those that fall within the "rebuttable presumption of compliance" for higher-priced loans—either loan would meet this test for QM-Plus purposes. However, loans that are QMs because they meet the CFPB's provisions for GSE-eligible covered transactions, small creditor exceptions, or balloon loan provisions would not be considered QRMs under QM-Plus.
- QRM treatment would only be available for loans secured by one-to-four family real properties that constitute the principal dwelling of the borrower. Other types of loans eligible for QM status, such as loans secured by boats used as a residence or loans secured by a consumer's vacation home, would not be eligible QRMs.
- Under the QM-Plus approach, all QRMs would be required to be first-lien mortgages. For purchase QRMs, this would exclude "piggyback" loans, and no other recorded or perfected liens on the property could exist at closing to the knowledge of the originator. For refinance QRMs, junior liens would not be prohibited, but would be included in the LTV calculations described below.

The originator would need to determine that the borrower is not currently 30 or more days past due on any debt obligation, and the borrower has not been 60 or more days past due on any debt obligations within the preceding 24 months. Further, the borrower 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, had personal property repossessed, had any one-to-four family property foreclosed upon, or engaged in a short sale or deed in lieu of foreclosure. We believe it would be prohibitively tedious for underwriting purposes and would also reduce the number of loans eligible for QRM status.

The LTV at closing could not exceed 70%; a down payment of 30% would be required. Junior liens would be permitted only for non-purchase QRMs, and would need to be included in the LTV calculation if known to the originator at the time of closing, and if the lien secures a home equity line of credit or similar credit plan, it must be included as if fully drawn. Property value would be determined by an appraisal, but for purchase QRMs, if the contract price at closing for the property was lower than the appraised value, the contract price would be used as the value. We also strongly oppose this aspect of QM-Plus. We believe a 30% down payment requirement is extremely excessive, as such a requirement would exceed even the 2011 QRM proposal. In addition, a 30% down payment requirement would likely

have a significant impact on first-time homebuyers by delaying or outright preventing their ability to purchase a home. This aspect of QM-Plus would also mean that fewer loans would be eligible for QRM status.

For the reasons noted, we ask the agencies to eliminate QM-Plus as a possible alternative to QRM. However, if the agencies pursue the QM-Plus approach, we urge them to modify QM-Plus in a way that addresses each of the concerns listed above.

The agencies recognize that the QM-plus approach would cover a significantly smaller portion of the mortgage market and that securitizers would be required to retain risks for QMs that do not meet the factors described above. We believe the QM-Plus approach would have a negative impact on many credit unions defined as small creditors under the CFPB's QM rule, and the members of these credit unions. If the agencies choose to pursue QM-Plus, we urge them to modify the standard in a way that alleviates the very real concerns described above. In addition, if the agencies choose to pursue QM-Plus, we urge them to incorporate exemptions that would provide flexibility for federally insured mortgage lenders.

CONCLUSION

CUNA supports a QRM standard that is aligned with the CFPB's QM, although we continue to have serious concerns about the borrower's 43% DTI cap requirements for a QM. We urge the agencies to work with mortgage lenders to help ensure non-QM and non-QRM loans will be available to borrowers and acceptable to regulators and the secondary market. We would welcome the opportunity to talk with the agencies further about the views we have expressed in our letter. In the meantime, if you have any questions about our comments, please do not hesitate to contact me at (202) 508-6736.

Sincerely,



Mary Mitchell Dunn
Deputy General Counsel