INDEPENDENT COMMUNITY BANKERS *of* AMERICA®

October 30, 2013

Robert deV. Frierson,
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1411

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

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

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

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA43
Federal Housing Finance Agency
Constitution Center
(OCG) Eighth Floor
400 Seventh Street, SW
Washington, DC 20024

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
Credit Risk Retention: RIN 2501-AD53

Re: Credit Risk Retention

Dear Sir or Madam:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the Credit Risk Retention Rule proposed by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance

[1] The Independent Community Bankers of America® (ICBA), the nation's voice for nearly 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With nearly 5,000 members, representing approximately 23,600 locations nationwide and employing almost 300,000 Americans, ICBA members hold more than $1.2 trillion in assets, $1 trillion in deposits and $750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit www.icba.org.

Corporation (FDIC), U.S. Securities and Exchange Commission, Federal Housing Finance Agency, and Department of Housing and Urban Development (collectively referred to as the "Agencies"). This proposal is a revision of a rule proposed in 2011 to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 15G generally requires the securitizer of asset-backed securities to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. The statute includes an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages" as defined by the Agencies.
ICBA has signed a separate joint comment letter with the Coalition for Sensible Housing Policy. The purpose of this submission is to provide some additional comments from the unique perspective of community banks. Community banks primarily sell residential mortgages to the Government Sponsored Enterprises (GSEs) or other aggregators for securitization, and generally would not engage in private securitization activities themselves. However, as originators they would be impacted by loan product and underwriting parameters driven by these risk retention rules, and thus our comments are focused in that regard.

Preferred QRM Approach
The proposed rule equates the definition of a qualified residential mortgage (QRM) with the Consumer Financial Protection Bureau's new "ability-to-repay" qualified mortgage (QM) standard that sets standards to ensure a borrower has the means to repay their mortgages as called for by the Dodd-Frank Act. ICBA strongly supports the Agencies' proposal to equate QRM and QM definitions. This alignment will provide clarity for consumers and the industry and limit the already enormous burden community banks face implementing new residential mortgage related rules. Adopting the QM definition for the credit risk retention rule would ensure the proper discipline in the credit origination process needed to protect investors, consumers, financial institutions and the financial industry from problems that had existed in the securitization process that this rule is intended to correct. In our view, it meets the stated goals and principles of the agencies to ensure very high credit quality without excluding a significant number of mortgages to credit worthy borrowers. This definition should allow for the development of a non-QRM market and enable liquidity for securitizations containing those loans as well. As the Agencies point out, the QM definition was designed to help ensure that borrowers are offered and receive residential mortgage loans on terms that reasonably reflect their financial capacity to meet the payment obligations associated with such loans and the definition excludes riskier products. Clearly, this proposed rule addresses the Section 15G requirements to define a QRM exemption taking into consideration underwriting and product features that historically result in a lower risk of default. Thus, we strongly support the Agencies' approach of using the QM definition for the QRM definition.

Alternative QRM Approach
ICBA strongly objects to the Agencies' alternative QRM approach or "QM-plus," that was considered by the Agencies, but ultimately not selected as the preferred approach. The alternative approach would take the QM criteria as a starting point for the QRM definition, and then incorporate additional standards that were selected to reduce the risk of default. The QM-plus approach would begin with the core QM criteria adopted by the CFPB and add several additional factors. A QRM loan would be required to meet the QM requirements for product type including loan term, points and fees, underwriting, income and debt verification, and debt-to-income ratio or DTI. There would be no distinction between those mortgages that fall within the CFPB's "safe harbor" versus those that fall within the CFPB's "presumption of compliance for higher priced"

mortgages. Loans that are QM because they meet the CFPB's provisions for GSE-eligible covered transactions, small creditor exemptions, or balloon provisions would not be considered QRMs under the QM-plus approach. More importantly, to be eligible for QRM status, the loan-to-value or LTV ratio at closing could not exceed 70 percent.

ICBA raised strong concerns about a high down payment requirement and its impact on community banks and their customers, particularly lower income borrowers, in a letter (attached), dated December 21, 2010, to the agencies responsible for implementing Section 941 prior to the publication of the initial proposed rule. Those concerns remain. Congress decided not to include a loan-to-value consideration in the Dodd-Frank Act and we strongly object to the Agencies' consideration of imposing one. Further, as we stated in our December 21, 2010, letter, we do not believe it was the intent of Congress to limit purchase money and refinancing transactions to only borrowers with very significant down payments. ***Thus, we urge the agencies not to go forward with the alternative QRM approach that would excessively limit credit to qualified borrowers with the ability to repay their mortgages.***

Premium Capture Cash Reserve Account

ICBA supports the Agencies' decision not to include a premium capture cash reserve account provision in the proposed rule. In the first proposed rule, the Agencies called for such an account to prohibit institutions from monetizing excess spread or premium, before the performance of the securitized assets could be observed and unexpected losses realized, thereby reducing the impact of any economic interest the sponsors may have retained in the outcome of the transaction and in the credit quality of the assets they securitized. The Agencies proposed the account to adjust the required amount of risk retention to account for any excess spread that is monetized at the closing of the transaction. Otherwise, the Agencies believe that a sponsor could use these premiums to effectively negate or reduce the economic exposure it is required to retain under the proposed rules. ICBA expressed concerns about requiring such accounts. The Dodd-Frank Act contained no such provision and we do not believe this reflects market realities as it would negate the securitizer's returns on the transactions and not recognize transaction origination costs. We raised concerns that this requirement will lessen credit availability, while making available credit more expensive. While it should not be easy for securitization sponsors to circumvent risk retention requirements, this approach is not workable.

Allocation of Risk Retention

We strongly support the Agencies' approach of not placing the burden of risk retention on loan originators and rather providing that the securitization sponsor generally retain the risk. If community banks were forced to hold "skin in the game," it would be a strong disincentive for them to make loans requiring it because of the challenges they would face in holding offsetting capital. The original proposal would have permitted a securitization sponsor to allocate a portion of its risk retention obligation to any originator of the underlying assets that contributed at least 20 percent of the underlying assets in a pool. In the most recent proposal, the Agencies are proposing an allocation-to-originator provision substantially similar to the original proposal, which we support.

Exemption for Securitizations of Assets Issued, Insured, or Guaranteed by the United States or Its Agencies

As we stated in our comment letter on the original proposal, ICBA strongly supports the exemption from risk retention requirements that the proposed rule contains for loans sold for securitization to government agencies such as Fannie Mae and Freddie Mac. This exemption is key for community banks to be able to continue to offer fixed rate residential mortgages to their customers.

ICBA also supports the proposed additional exemption from risk retention for securitization transactions that are sponsored by the FDIC acting as conservator or receiver under any provision of the Federal Deposit Insurance Act or Title II of the Dodd-Frank Act. We agree that this is an important function and that the receivers and conservators are not originating the loans and are guided by sound underwriting practices. Also, the exemption would help the FDIC to maximize the value of assets in a conservatorship or receivership.

Implementation
The credit risk retention requirements would become effective for securitization transactions collateralized by residential mortgages one year after the date on which final rules are published in the Federal Register and two years after that date for any other securitization transaction. ICBA supports this implementation timeframe.

Summary
ICBA strongly supports the agencies proposal to adopt the definition of QM for the purposes of defining QRM. We believe the definition of QM would identify those loans where credit risk retention is needed and where sufficient ability to repay standards make it unnecessary. Using the QM definition also will provide more clarity and consistency for an industry already heavily burdened with implementation of a variety of new and revised residential mortgage rules. We strongly object to the QRM-plus alternative that would require an unnecessarily high down payment requirement and overly restrict credit availability.

We appreciate the opportunity to comment, and we look forward to working with the Agencies as this rulemaking process moves forward. If you have any questions regarding this comment letter please contact the undersigned at ann.grochala@icba.org.

Sincerely

/s/

Ann M. Grochala
Vice President, Lending and Housing Policy

Attachment

INDEPENDENT COMMUNITY BANKERS of AMERICA

December 21, 2010

Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department
of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
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Honorable Shaun L. S. Donovan
Secretary
Department of Housing
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451 7th Street, SW
Washington, DC 20410

Honorable Mary L. Schapiro
Chairman
Securities Exchange Commission
100 F Street, NE
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Honorable Ben S. Bernanke
Chairman
Board of Governors of
the Federal Reserve System
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Honorable John G. Walsh
Acting Comptroller
Office of the Comptroller
of the Currency
250 E Street, SW
Washington, DC 20219

Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corp.
550 17th Street, NW
Washington, DC 20429

Honorable Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

Dear Ladies and Gentlemen:

The Independent Community Bankers of America[1] wishes to share with you the thoughts and concerns of community banks as you work to implement Section 941 of the Dodd-Frank

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

Wall Street Reform and Consumer Protection Act (the Act) through the issuance of regulations regarding credit risk retention.

ICBA strongly supports the return to sound underwriting standards as reflected in the Act. Nearly all community banks offer residential mortgages to their customers. Their ability to provide mortgages is an important service to their customers and the communities they serve. Their close ties to their customers and conservative underwriting have resulted generally in significantly lower default and delinquency rates on mortgages than the industry as a whole. Community banks take care to properly underwrite residential mortgages to ensure that their customers can afford their mortgage payments and keep their homes.

How the agencies define "qualified residential mortgage" will have far reaching effects on the structure of the mortgage market, and the cost and availability of credit to consumers and borrowers.

As you draft implementing regulations, ICBA strongly urges you not to define "qualified residential mortgage" so stringently that thousands of community banks and other lenders will be driven from the residential mortgage market, enabling only a few of the largest lenders to operate in it. Too narrow a definition will also severely limit credit availability to many borrowers who do not have significant down payments or who have high net worths but relatively low incomes resulting in high debt-to-income ratios.

The Act directs the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development and the Director of the Federal Housing Finance Agency to jointly define the term "qualified residential mortgage" taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. The Act suggests the following considerations:

1. Documentation and verification of the financial resources relied upon to qualify the mortgagor;
2. Standards with respect to:
    a. The residual income of the mortgagor after all monthly obligations;
    b. The ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;
    c. The ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;
3. Mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;
4. Mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and
5. Prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments and other features that have been demonstrated to exhibit a higher risk of borrower default.

These are generally factors that community banks regularly use in mortgage underwriting.

In defining “qualified residential mortgage,” the Act directs the agencies, Commission, HUD and FHFA to define the term no broader than the definition of “qualified mortgage” as the term is defined under section 129C(c)(2) of the Truth in Lending Act as amended by the Act and implementing regulations. For clarity and ease of compliance, we believe that the definition of “qualified residential mortgage” and “qualified mortgage” should be consistent and be as similar as reasonably possible.

In ICBA’s view, the definition of “qualified residential mortgage” should be relatively broad and encompass the largest portion of the residential mortgage market, consistent with the stronger underwriting standards called for by the Act. The intent of the Act is to foster stronger underwriting standards, thus more loans in the future should be able pass a “qualified residential mortgage” test.

Calls by some in the industry to impose by regulation an extremely strict definition of “qualified residential mortgage” would not ensure conservative underwriting as much as permit the largest institutions to gain market share and further consolidate the mortgage industry, driving community banks and other competitors out of the mortgage business, limiting consumer choice and raising the cost of mortgages for borrowers. Loans with unusual characteristics such as negative amortization and perhaps interest only loans should not be exempted and should have a risk retention requirement commensurate with their risk.

Community banks have told ICBA that the regulators must also provide some flexibility to permit the use of mitigating factors when considering debt to income ratios. Community banks have often lent to highly qualified individuals who have a high net worth but relatively low income levels, such as certain professionals, small business owners and retired individuals with large retirement accounts, but low fixed incomes. Without such flexibility, reasonably priced credit will not be available to these consumers and in some cases lenders may face violations of the Equal Credit Opportunity Act.

While the Act does not specifically include loan-to-value as a consideration in the definition of “qualified residential mortgage,” community banks have long viewed this as an important risk mitigator. We strongly object to suggestions that borrowers be required to put as much as 30 percent down on a mortgage. This would create too high a hurdle for first-time homebuyers and for homeowners who are trying to refinance their mortgages after declining housing prices. Community banks have not been proponents of loan-to-value ratios of over 100 percent and have been cautious about lending more than 90 percent of property value. The use of private mortgage insurance has long been used by community banks and other lenders in risk management and should be used to help people obtain mortgages with a reasonable down payment. Further, we believe that limiting the loan-to-value ratio of a “qualified residential mortgage” to 70 percent or less will drive more business to the FHA which is exempt from the Act, resulting in more risk on the Federal Government’s balance sheet which only increases the budget deficit, not reduce it.

If the definition is too restrictive community banks will be faced with retaining a relatively large amount of credit risk on well underwritten loans and will not be able to remain in the residential mortgage market due to their lack of access to the increased capital required to offset risk retention requirements. We are particularly concerned that community banks operating in rural areas will be driven out of the market by Farm Credit System direct lenders who are supervised by the Farm Credit Administration and who received an exemption in the Act for loans or other financial assets that they make, insure, guarantee or purchase.

We do not believe it was the intent of Congress to limit purchase money and refinancing transactions to only borrowers with very significant down payments or who have been in their homes for enough time to reach a relatively low loan-to-value ratio despite the decline in housing prices that has impacted much of our country. Indeed, the administration has taken a number of steps to encourage and help homeowners refinance their mortgages to lower, more affordable interest rates. The definition must be reasonable to permit first-time homebuyers a reasonable chance at homeownership. We do not support returning to the loose underwriting standards that caused the residential mortgage crisis. However, if the regulation is written too stringently, our fragile housing market—and our economy—will tumble further as demand for home mortgage loans comes to a halt. Only the largest financial institutions will be able to remain in the residential mortgage market and "too big to fail" will continue when only a handful of large institutions dominate and control the market. Consumers will suffer from fewer mortgage options, higher costs and poor service.

We would be happy to discuss our views further with you and will provide additional comments when the proposed rule is published for public comments.

Sincerely,

Camden R. Fine

Camden R. Fine
President and CEO