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SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

BARNEY FRANK, MA, RANKING MEMBER

April 15, 2011

Honorable Timothy Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Honorable Shaun Donovan
Secretary
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Honorable Mary Schapiro
Chairman
The Securities and Exchange Commission
100 F Street, NE, Room 10700
Washington, DC 20549

Honorable Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW, 4th Floor
Washington, DC 20552

Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

Honorable John Walsh
Acting Comptroller of the Currency
Administrator of National Banks
250 E Street, SE
Washington, DC 20219

Honorable John Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Sirs and Madams:

We are writing to provide comments on the proposed "Qualified Residential Mortgage" ("QRM") rule that the agencies are pursuing pursuant to Section 941 of the "Wall Street Reform and Consumer Protection Act" (P.L. 111-203). This rule implements an important provision designed to eliminate the culture of risk-free lending, by imposing requirements on securitizers that package and sell mortgage loans.

Despite characterizations that have been publicly made that the QRM safe harbor exemption will determine which loans will and will not be securitized, it is important to keep in perspective that the exemption merely determines which mortgage loans will and which loans will not be subject to risk retention requirements. The statutory risk retention provision did not envision a market in which only exempt QRM loans would be securitized. It envisioned an active market for both QRM exempt and non-exempt loans. The difference is simply that securitizers of non-exempt loans would have to retain risk, a requirement which can be complied with while offering competitive loans. Moreover, it is also important to keep in mind that securitized loans are not the only source of private sector mortgage loans. Many institutions have and will continue to hold mortgage loans in portfolio.

The draft rule appropriately establishes a number of requirements for a QRM exempt loan that prohibit anti-predatory loan practices, including a prohibition against balloon payments and against negative amortization and interest only loans, a prohibition against using junior lien debt for a down payment, a prohibition against prepayment terms, and others. The draft rule also includes requirements that are more related to risk underwriting characteristics, such as down payments, debt to income ratios, and past payment history. The appropriateness of these latter provisions is best measured by a balancing of the incremental reduction in loan risk of the provision against the negative effect of such provisions in excluding borrowers from this QRM exempt loan market.

In this respect, it does seem appropriate to establish some down payment requirement (and inversely a loan to value requirement). We learned from the subprime mortgage crisis that borrowers with no skin in the game, through zero down payment options available at that time, purchased homes and took on debt without the requisite personal commitment, and also that the equity in these loans was clearly insufficient to weather price downturns. At the same time, we are very concerned that the high 20% down payment requirement in the draft rule inappropriately excludes too many otherwise qualified homebuyers simply because they lack the wealth necessary to make a down payment, which can range, for example, from $30,000 on a $150,000 home to $100,000 on a modestly priced $500,000 home in a high cost area. In contrast, FHA currently requires only a 3.5% cash down payment, and Fannie Mae and Freddie Mac currently require a 10% down payment. There is evidence that a 20% requirement does not result in sufficiently lower risk to justify the significantly enhanced hurdle to buying a home that this represents.

A similar concern arises out of the requirement that a borrower cannot have been more than 60 days past due on any debt within the last two years. While prior payment history factors are relevant to risk, this provision is far too strict to meet its intended purpose. For example, loans to individuals who were inattentive to a credit card and missed two payments would not qualify as a QRM. This would also exclude loans to homeowners who struggled in the face of personal economic problems, such as unemployment, to maintain on-time mortgage payments, but in doing so were unable to make on-time payments on all their other debt at all times. The economic crisis of the last several years has taken a toll on personal finances, and many creditworthy borrowers have had to struggle to make all their debt payments on time. We would therefore suggest that this provision be eliminated or modified to be less stringent.

The draft rule appropriately includes a requirement for QRM exempt mortgages that the loan documents must contain certain requirements regarding servicing policies and procedures, including requirements related to loss mitigation and subordinate liens. Proper servicing actions are an important component in reducing loan risk, particularly with respect to loss mitigation, which reduces the incidence of foreclosure when properly carried out. However, we are concerned that the requirements appear so general as to cast doubt on their effectiveness, and we would urge that more specific standards be incorporated in the final rule.

We would also ask that you explore whether it is possible to utilize other qualitative factors that prudent lenders commonly use, in lieu of some of the more bright line restrictions which are identified in this letter as creating inappropriate burdens.

Finally, we would suggest that the draft rule make a more reasonable distinction between vertical and horizontal risk retention requirements. It is appropriate that the rule provide flexibility for securitizers to comply with risk retention in different, but equivalent, ways. However, the rule appears to provide the same numerical requirement for both the vertical and horizontal option. Since the risk exposure of the latter is much higher, it would seem appropriate to raise the level for the former, to create an appropriate differential to reflect the different risk profile that each of these exposures represent. This would create a more equitable risk tradeoff in terms of options for securitizers. This would also address concerns that the 5% vertical option may not provide a sufficient risk exposure, in light of the fact that the losses on any specific loan within a pool may barely exceed, if at all, the underwriting fees related to that particular loan. This could undermine the goal of the risk retention provision of properly incentivizing securitizers to comply with QRM requirements in order to obtain the exemption.

Thank you for consideration of these comments.

Sincerely,

Barney Frank

Carolyn B. Maloney

Maxine Waters

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[illegible]

[illegible]

[illegible]

[illegible]

Gary L. Ackerman

Keith Ellison

Gwen S Moore

[illegible]

Signatories

Rep. Barney Frank

Rep. Maxine Waters

Rep. Brad Miller

Rep. James A. Himes

Rep. Stephen F. Lynch

Rep. André Carson

Rep. Gary L. Ackerman

Rep. Gwen Moore

Rep. Carolyn B. Maloney

Rep. Melvin L. Watt

Rep. Luis V. Gutierrez

Rep. Al Green

Rep. Gary C. Peters

Rep. Michael E. Capuano

Rep. Keith Ellison

Rep. Joe Baca