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Office of the Comptroller of the Currency
regs.comments@occ.treas.gov
Docket Number OCC-2010-0002

Federal Reserve Board
regs.comments@federalreserve.gov
Docket No. R-1411

Federal Deposit Insurance Company
Comments@FDIC.gov
RIN 3064-AD74

Securities and Exchange Commission
rule-comments@sec.gov
File Number S7-14-11.

Federal Housing Finance Agency
RegComments@fhfa.gov
RIN 2590-AA43

Department of Housing and Urban Development
www.regulations.gov
Docket Number FR-5504-P-01

Re: *California community groups comment on proposed QRM Rules*

To Whom It May Concern:

The undersigned groups represent California-based nonprofit legal service organizations, advocacy organizations, housing counseling agencies, community development corporations, housing providers, and local government. We file these timely comments to express our concerns regarding the proposed Qualified Residential Mortgage (“QRM”) rules.

We believe that a serious lack of regulation, oversight and accountability led to the foreclosure and financial crises. The Dodd-Frank Act was a welcome, if belated, effort to address some of the weaknesses in our finance and consumer protection systems.

In particular, the Act requires industry participants to retain some of the risk in making and securitizing home loans, with the expectation that these risk retention requirements would encourage lenders to make

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better, safer loans that are more likely to be repaid. The Act also created an exception to these risk retention requirements for the safest of loans, dubbed “Qualified Residential Mortgages.”

We are concerned that the proposed rules regarding Qualified Residential Mortgages may have a significant negative impact on low- and moderate-income communities and communities of color. This impact may manifest itself in a lack of credit- and wealth-building opportunities in vulnerable neighborhoods—possibly in violation of fair housing and fair lending laws and contrary to community stabilization efforts—or in a resurgence of predatory lending of inferior, risky loan products in those neighborhoods, with similarly dire outcomes for borrowers and communities.

With an eye to preventing either of these undesirable outcomes, we offer the following comments, organized around principles that must be honored in the development of final rules:

- **Due consideration: QRM rules should be reissued.** The proposed QRM rules have generated much anxiety and confusion because they are both complicated and could have a very significant impact on the communities we represent. Commenting on the proposed QRM guidelines is very difficult given the widely acknowledged lack of clarity regarding the likely effect of the proposed rules. This lack of information has placed community and consumer groups in a difficult position, which may well result in groups with similar concerns making contradictory comments about whether to loosen or tighten QRM standards.

To address this information gap, the regulators should issue a new proposed QRM rule and provide additional time for thoughtful analysis. If the rule is reissued, the regulators should provide the public with additional analysis of the likely effects of QRM provisions so that the comments on so important a proposal can be better informed. (This is especially true if, as has been rumored, the Consumer Financial Protection Bureau decides to reissue proposed Qualified Mortgage [“QM”] rules, since QRM and QM are intimately related.)

- **Safety.** All borrowers and all communities deserve protection from bad lending products and practices. In general, risk retention is important, would have helped mitigate the foreclosure crisis had it been in place years ago, and would be beneficial for all loans. Indeed, were we starting with a blank slate, we might have preferred that there be no QRM exception to the risk retention requirement. However, since the existence of the QRM category is a foregone conclusion due to its inclusion in Dodd-Frank, concerned parties need to engage on the scope of QRM, balancing the increased safety provided by risk retention with potential adverse consequences to would-be homeowners’ access to affordable home loans.

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Again, a difficulty with intelligently assessing this proposal is that it is hard for commenters to forecast whether the pricing difference between QRM and non-QRM loans will be significant. More time and analysis is needed on this score as well. Regardless, any final QRM rule should further the goals of Dodd-Frank, in conjunction with QM, and protect borrowers and neighborhoods from harmful loans.

- **Accessibility: Fairness in pricing.** While not all Americans are ready for homeownership at any particular point in time, homeownership is important and appropriate for many. It is the primary way in which families are able to build wealth, to get ahead and to establish greater control over their lives. It is critical that these rules not close the door to homeownership for members of low- and moderate-income communities and communities of color who are ready for homeownership.

As one example, most Californians will have difficulty coming up with a 20% down payment given our affordability crisis and the high cost of housing in most markets. We believe that down payments of less than 20% can be appropriate for certain borrowers, and cite the historically good payment performance of CRA loans as evidence that lower down payment, portfolio loans can perform better than loans with higher down payments but otherwise weaker underwriting criteria. In addition, any analysis of borrower ability to pay should also account for residual income to ensure borrowers will have sufficient funds left at the end of the month to meet all basic needs.

- **No two-tiered system.** Advocates have raised legitimate concerns that these proposed rules may create or perpetuate a two-tiered home mortgage market. Home lending has already declined in neighborhoods of color in recent years. Families in low- and moderate-income neighborhoods and neighborhoods of color will likely be further impacted by high down payment, low debt-to-income, and pristine credit requirements. If so, and if QRM results in stark pricing or other differences, QRM will only exacerbate the troubling trend towards re-redlining, raising serious fair housing and fair lending concerns.

Regulators must closely monitor the effects of any final QRM rule and be prepared to amend it quickly, if needed, to ensure we are not shutting out large portions of society from homeownership. This is of even greater concern because it seems clear that current GSE reform efforts will mean, at a minimum, that Fannie Mae and Freddie Mac may not exist in their current form, and the role they were intended to play in supporting homeownership opportunities for low- and moderate-income families may disappear.

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- **Accountability.** Risk retention is one mechanism for building much-needed accountability into the mortgage finance system. Tighter servicing standards and links to homebuyer education offered by qualified housing counselors are others.
 - Any exception to risk retention should be tied to loans being subject to servicing rules that ensure proper application of payments, a ban on improper fees, mandatory loss mitigation that promotes sustainable loan modifications (including principal reduction, as appropriate), prohibitions on abusive forced place insurance practices, and the creation of a duty of good faith and fair dealing. Ideally, QRM rules would be tied to national uniform servicing standards being discussed currently by federal regulators.
 - Housing counseling has been shown to be effective by several studies. California groups have long argued to federal banking regulators that rules relating to potentially abusive practices should require or incent borrowers to seek homebuyer and other education from qualified nonprofit agencies.
- **Find the proper balance.** In short, the goal of the proposed rule should be, consistent with the statute, to protect communities from abusive loans while allowing equal access to homeownership. We urge the regulators to proceed cautiously, and be prepared to make needed changes quickly, to achieve these goals and honor these critically important principles.

Very Truly Yours,

California Reinvestment Coalition

Aspera Housing Inc

California Rural Legal Assistance

Consumer Action

East Palo Alto Council of Tenants (EPACT) Education Fund

Fair Housing Council of the San Fernando Valley

Fair Housing of Marin

Housing and Economic Rights Advocates

Law Foundation of Silicon Valley

Legal Aid Foundation of Los Angeles

LULAC Council 3102

Cc: National Community Reinvestment Coalition