JEFFREY S. MAY
President & CEO

August 1, 2011

Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 2-3
Washington, DC 20219
Docket Number OCC-2010-0002

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1411

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

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
Fourth Floor, 1700 G Street, NW
Washington, DC 20552

CHERRY CREEK
MORTGAGE COMPANY
7600 E. Orchard Road, Suite 250-N • Greenwood Village, CO 80111 • (303) 320-4040

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Re: Credit Risk Retention Interagency Proposed Rule; IV. Qualified Residential Mortgages

- OCC: Docket No. OCC-2011-0002 regs.comments@occ.treas.gov
- Federal Reserve: Docket No. R-1411 regs.comments@federalreserve.gov
- FDIC: RIN 3064-AD74 comments@FDIC.gov
- SEC: File Number S7-14-11 Rule-comments@sec.gov
- FHFA: RIN 2590-AA43 RegComments@FHFA.gov
- HUD: RIN 2501-AD53 via www.regulations.gov

Ladies and Gentlemen:

I appreciate the opportunity to comment on the Credit Risk Retention Proposed Rule ("Proposed Rule") issued jointly by your agency and the other federal banking, housing and securities regulatory agencies. My comments focus specifically on Section IV of the Proposed Rule concerning Qualified Residential Mortgages ("QRM").

I am President and CEO of Cherry Creek Mortgage Co., Inc., headquartered in Greenwood Village, Colorado. I have spent my career in the mortgage business, and I am proud to lead a team of dedicated mortgage lending professionals.

Housing is a critical component of our nation's economy, and home ownership is an important part of the American Dream. Every day our company works with borrowers who want to acquire a new home, and those who already own a home, and are hanging on to the American Dream. Their home is where they're raising their family and where they make their memories. They make their mortgage payments month in and month out. Unfortunately, proposed federal regulations threaten to penalize and create hardships for these borrowers on Main Street.

In particular, the proposed definition of a Qualified Residential Mortgage (QRM) could have a dramatic negative impact on homeownership because the QRM definition determines which mortgages will be exempt from risk retention requirements. The QRM will impact both those looking to acquire a home, and those hoping to refinance their mortgage at a lower cost.

During the years 2009 and 2010, Cherry Creek Mortgage Company made over 18,000 conventional mortgage loans. We have analyzed the data related to these loans in light of the proposed QRM definition. Of these loans, only 38% would have been QRM eligible. And when we take a look at the loans that we made to minorities, only 27.5 percent of these would have been QRM eligible. Clearly, a significant number of our borrowers would not qualify for a QRM loan, and the consequence is likely to be a more expensive mortgage for those borrowers. It is also worth noting that the default rate on this recent 2009-2010 book of business is less than two-tenths of one percent.

In some cases, the consequence of a high down payment QRM may be that borrowers can no longer afford, or even qualify for a mortgage. The impact could be particularly significant in the refinance market since the proposed QRM equity requirement is higher for refinances than for purchase loans. Due to the decline in housing values, may homeowners have seen their equity shrink and they will have no hope of refinancing into a more affordable mortgage if the proposed QRM down payment requirements remain in place.

When an observation is repeated over and over again, many will start to believe that it is true even when the facts lead to a different conclusion. An example of this is the common belief that a higher mortgage down payment will significantly reduce the likelihood of default. However, years of data show that the principal determinant in the rate of default is the quality of underwriting standards, not the down payment level. The historical data also shows the danger of arbitrarily raising the down payment requirement for a QRM loan.

Since much of the debate surrounding the QRM definition deals with the appropriate level of down payment, I would like to share with you a recent analysis of data from CoreLogic Inc. conducted by Vertical Capital Solutions.[1] As outlined in the Vertical Capital Solutions analysis, an increase in the minimum down payment from 5% to 10% would likely have only a negligible impact on default rates (reducing them by less than 1 percent), but would significantly reduce the number of eligible borrowers (anywhere from a 4% to 7%), and increasing the down payment to 20% would reduce eligible borrowers by 15% to 20%, again with a negligible reduction in default rates (data based on sample QRM consisting of well underwritten loans).

Creating an arbitrary down payment requirement in regulation will in fact exclude many creditworthy borrowers from home ownership. Underwriting a residential mortgage is a process requiring solid data analysis, accurate and true verification of the borrower's financial situation, coupled with good objective underwriting judgment. Part of sound underwriting judgment is the ability to analyze many compensating factors that determine the borrower's ability to pay. There are many factors in the loan process that need to be weighed and evaluated, down payment is only one consideration when underwriting a loan and it is important not to overemphasize its

[1] Vertical Capital Solutions, an independent valuation and advisory firm in New York, utilized loan performance data maintained by First American CoreLogic, Inc. to conduct the analysis covering loans originated from 2002 to 2008 and using sample QRM criteria that reflect sound underwriting.

contribution to the final likelihood of loan performance. More compelling factors for successful home ownership and avoidance of default are the demonstrated ability to meet financial obligations, stable employment and a commitment to home ownership.

A recent study from Moody's Analytics prepared by Mark Zandi and Cristian deRitis, shows that foreclosure rates through the recent recession have remained relatively low on mortgages that were underwritten well. In particular, the authors reference a study of foreclosure rates on loans that had mortgage insurance and were originated in 2006 and 2007. The loans had strong underwriting criteria, in particular credit scores above 660 FICO. The study tracked the foreclosure rates on these loans through 2010. While the foreclosure rate was lower for higher down payment loans, the foreclosure rate did not significantly increase even with low down payments. For example, loans with a 10 percent down payment had a foreclosure rate of 3.3 percent, while those with a 5 percent down payment had a foreclosure rate of 4 percent. While the foreclosure rate for loans with a 20 percent down payment did drop to 1.3 percent, this must be weighed against the significant impact on borrower eligibility from a high down payment.[2]

As already noted, a high down payment requirement in the QRM definition would increase mortgage costs. This would not only harm individual borrowers, but would further delay the housing recovery. Risk retention is not cost free, and would result in higher interest rates on non-QRM mortgages. The effect of the high down payment requirements combined with the strict 28/36 debt to income standards also set forth in the proposed rules will effectively force many more borrowers into non QRM loans where higher rates (perhaps as much as 300 basis points higher based on a JP Morgan study of December 1, 2009[3]) would limit their ability to qualify for a mortgage.

One example of how the current draft rule would work is a borrower with a 25% loan to value (75% equity in the property) but a 37% debt to income ratio would not qualify under the QRM exemption. It does not make sense that this borrower would pay more for a mortgage than a borrower with 20% equity and a 36% debt to income ratio.

In addition, a high down payment QRM would lead to further consolidation in the mortgage market since large banks will be the only lenders with sufficient capital to comply with the risk retention requirements that sponsors of securities transactions may pass on to originators non-QRM mortgages.

A further potential consequence of the current QRM definition is that more borrowers would be driven to FHA and other government programs that are exempt from the risk retention requirements. This would occur at the very time that many national policymakers are recommending a reduction in the federal government's role in the housing market.

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[2] Mark Zandi & Christian deRitis, "Special Report: The Skinny on Skin in the Game," *Moody's Analytics* (March 8, 2011).

[3] J.P. Morgan Securities Inc. "Securitization Outlook" (December 11, 2009)

For each of these reasons, I ask that you modify the down payment requirement as well as the restrictive debt to income ratios in the proposed QRM regulations. A narrowly constructed QRM could have very serious negative consequences for borrowers seeking to own a home, and adversely impact an already weak housing market.

The data shows that the best approach to reduce mortgage defaults is to focus on quality underwriting standards. The free market corrected the problems of the past in 2008. The proposed narrowly constructed QRM is unnecessary and overreaching government regulation that will harm consumers and slow the housing recovery.

Sincerely,

Jeffrey S. May
President and CEO