UAMC
UNIVERSAL AMERICAN MORTGAGE COMPANY

July 29, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Docket Number R-1411

Office of the Comptroller of the Currency
250 E Street, S.W., Mail Stop 2-3
Washington, DC 20219
Docket Number OCC-2011-0002

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

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA43
Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, DC 20552

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, S.W., Room 10276
Washington, DC 20410-0500
Docket Number FR-5504-P-01

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

Re: Credit Risk Retention

This letter contains the comments of Universal American Mortgage Company ("UAMC"), a national mortgage lender, and its settlement service affiliates regarding the above-referenced Notice of Proposed Rulemaking ("NPR") of the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("the Board"), the Federal Deposit Insurance Corporation ("FDIC"), the U.S. Securities and Exchange Commission ("SEC"), the Federal Housing Finance Agency ("FHFA"), and the Department of Housing and Urban Development ("HUD") (collectively, the "Agencies") 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 of 2010 (the "Dodd-Frank Act"). The Agencies have requested comments to the NPR by August 1, 2011. UAMC is a subsidiary of Lennar Corporation ("Lennar"), a national homebuilder, and has several settlement service affiliates which include Eagle Home Mortgage, LLC ("Eagle") and North American Title Group, Inc. ("NAT"). Consequently, UAMC is in a unique position to comment on the effects that the proposed rulemaking on risk retention would have on consumers in the mortgage market. UAMC is committed to providing safe, stable mortgage products to qualified, deserving consumers at prices they can afford. UAMC provides more specific comments below.

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I. Overview of UAMC

UAMC provides mortgage loan origination services and, through its affiliates, title agency services to consumers. UAMC entered into affiliate arrangements with NAT and others because of the benefits that having such affiliates would bring to UAMC's customers. Specifically, UAMC knew that its consumers would greatly benefit from the use of affiliated settlement service providers that would provide efficient, "one-stop-shopping" for consumers, thereby lowering consumer costs and providing consumers with more effective customer service.

To encourage consumers to use these service providers for their settlement service needs, UAMC and its affiliates frequently offer discounts and other incentives. Such incentives in the past have included builder upgrades, closing cost credits, and discount points. UAMC and its affiliates are able to offer such incentives to its consumers because of the cost savings and economies of scale realized through the affiliate relationship. Moreover, UAMC benefits from the certainty of knowing that its consumers will experience superior customer service and that the closing will occur on time. Consumers benefit through the incentives and the satisfaction of one-stop shopping. Should the Agencies proceed with rulemaking, they should not offer any proposal that limits consumer choice in mortgage lending products or inhibits the ability of lenders, such as UAMC, to offer *bona fide* incentives to their consumers if they decide to use an affiliated title or settlement service provider.

II. Future Preeminence of Qualified Residential Mortgages

The NPR proposes regulations to enact the risk retention provisions of the Dodd-Frank Act, as discussed above. Based on the apparent belief that lenders frequently provided mortgage loans to unqualified borrowers and then sold these loans on the asset-backed securities market, the NPR mandates that securitizers of mortgage-backed securities must retain at least 5% of the credit risk associated with the securitization offering. The NPR lists a variety of methods by which securitizers can retain this risk and restricts the ability of such securitizers from monetizing the excess spread through the establishment of a premium capture cash reserve account.

As an exemption from the risk retention requirement, the NPR proposes that securitizers need not retain any credit risk with respect to mortgage-backed securities that are collateralized by qualified residential mortgages ("QRMs"), which are mortgages with certain features that are apparently designed to ensure that the mortgages will be at less risk of default.

UAMC urges the Agencies to consider that if the proposed regulations are adopted in their current form, loans that do not qualify for QRM status ("non-QRM loans") will by necessity be more expensive for borrowers than QRM loans. There is a greater risk associated with non-QRM loans for lenders and investors; the 5% risk retention requirement, in addition to the premium capture cash reserve account, will make securitization of mortgage-backed securities collateralized by non-QRM loans less attractive. This greater risk will make non-QRM loans more difficult to sell on the secondary market, forcing non-QRM loans to become more expensive for consumers. Consequently, lenders will seek to make QRM loans whenever possible, and most borrowers will prefer QRM loans if they can qualify for them, due to the

increased cost or general unavailability of non-QRM loans. This, in turn, makes certain aspects of the proposed QRM definition very important.

III. QRMs – "Points and Fees"

The proposed regulations in the NPR would require that points and fees for a QRM be limited to 3% of the loan amount. For these purposes, the regulations would extend the definition of "points and fees" that is currently applicable to high-cost mortgages under Regulation Z to QRMs, with some revisions. Consequently, "points and fees" for purposes of QRMs would include all items listed in section 226.4(c)(7) of Regulation Z ("real estate-related fees"), other than amounts held for future payment of taxes, if the real estate-related fees are paid to an affiliate of the lender. These real estate-related fees consist of charges for standard settlement services, such as fees for title examination and title insurance, fees for loan document preparation, notary and credit-reporting fees, and property appraisal fees, including fees for pest-infestation or flood-hazard determinations.

In response to Request for Comment 124, with respect to the inclusion of real estate-related fees paid to affiliates in the points and fees calculation, this inclusion would unfairly impact UAMC, and any company that has affiliated service providers that would provide services covered by these fees, while at the same time adversely affecting consumers. As described above, UAMC is able to offer borrowers incentives and lower prices through the efficiencies created via affiliated relationships. The proposed definition of "points and fees," however, could mean that such mortgage loans (except in the case of particularly large loans) would fail the QRM test only because of the inclusion of affiliate-charged real estate-related fees under the 3% cap. At the same time, lenders without affiliate settlement service provider relationships could offer more expensive loans that nevertheless meet the QRM 3% test, resulting only in increased costs to consumers. This presents an unfavorable outcome for consumers; the provision of *bona fide* settlement services, regardless of the affiliation status of the service provider, should not disqualify loans from QRM status and protections, as this would result in more expensive loans for consumers. UAMC feels, therefore, that the inclusion of any *bona fide* real estate-related fees in the definition of "points and fees" is inappropriate, regardless of whether such fees are paid to an affiliate of the lender.

Lenders often have no discretion over the price of real estate-related fees. For example, title insurance fees are usually either mandated by state law or required to be filed with the relevant state authority and do not vary. Additionally, even if the lender is affiliated with the title insurance company in question, the lender does not receive any portion of such a fee. This eliminates the apparent concern that lenders could charge consumers more for settlement services performed through affiliates.

As demonstrated above, it is unfair and counterproductive to include settlement charges paid to affiliates in the "points and fees" definition while at the same time excluding the exact same charges that are not paid to affiliates. The only result would be increased consumer costs, which is antithetical to the goals of the Dodd-Frank Act. The proposed regulations should regulate all consumer charges in the same way, regardless of whether such charges are paid to affiliates. Therefore, UAMC strongly urges the Agencies to remove real estate-related fees paid to a lender affiliate from the definition of "points and fees" for purposes of QRMs. Removal of these

charges from the "points and fees" definition will help standardize the regulation of lenders and assist in keeping loan prices lower for consumers, and is otherwise warranted because lenders typically have little to no discretion over the amounts of these charges, even if they are performed by affiliates.

IV. QRMs – 20% Down Payment

The NPR would require that under a QRM, the borrower in a residential purchase-mortgage transaction must provide a cash payment equal to at least the sum of (a) the closing costs payable by the borrower, (b) 20% of the lesser of the estimated market value of the property and the purchase price of the property, and (c) the difference between the purchase price of the property and the estimated market value of the property, if positive.

In response to Request for Comment 121, UAMC feels that this down payment requirement will be too onerous on borrowers, without significantly accomplishing the goal of ensuring that borrowers have a stake in the property purchase. With housing prices and purchasing powers at current levels, as Moody's chief economist Mark Zandi has noted in his paper *The Skinny on Skin in the Game*, data from 2010 suggests that almost half of all mortgage originations from that year involved loans with less than 20% down payment. Further, the Center for Responsible Lending has noted that based on 2009 data, assuming a median home price of $172,100, a median family income of $49,777, and a savings rate of 6%, it would take the average American family 9 years to save enough money to make a 10% down payment, and 14 years to make a 20% down payment. Additionally, the FHFA itself has noted that based on 2009 data, more than two-thirds of loans purchased by Fannie Mae and Freddie Mac would have failed to meet the QRM requirements of 20% down payments and the requisite DTI ratios, discussed further below.

In establishing a bright-line, 20% down payment rule, therefore, the NPR will hurt the ability of many potential borrowers to obtain homes. Furthermore, the NPR fails to take into consideration the ability of lenders to utilize effective underwriting to make lending decisions. An inability to make provide a 20% down payment in cash, after all, does not necessarily denote an inability to repay the mortgage. Even otherwise low-risk borrowers can have trouble meeting a 20% down payment requirement. Lenders can identify such borrowers through effective underwriting, such as increased documentation requirements. However, instituting a bright-line 20% down payment rule for QRMs will make it difficult for such borrowers to obtain these QRMs, forcing them into the market for more expensive non-QRM loans, to the extent they are available.

Similarly, the NPR requires the borrower to provide, in cash, an amount equal to all closing costs payable by the borrower. UAMC urges the Agencies to reconsider this requirement. It is common practice for lenders, in recognition of the expense that closing costs can represent to some borrowers, to assist these borrowers by offering to pay certain closing costs on the borrowers' behalf. The NPR would eliminate the lender's capacity to assist borrowers in this manner, making it that much more difficult for such borrowers to obtain QRMs.

UAMC strongly urges the Agencies to eliminate the 20% down payment requirement. As demonstrated above, many borrowers will be unable to save enough money to make a 20% down payment or will not be able to make such a payment for many years, eliminating or greatly delaying the ability of these potential borrowers to purchase low-cost QRM loans. Such

borrowers would be forced to turn to more expensive non-QRM loans, to the extent that such loans are available at all. This would greatly impact the ability of these borrowers to achieve home ownership on reasonable price terms.

V. QRMs – Ability to Repay

The Dodd-Frank Act requires that lenders of QRMs must take into account the borrower's ability to repay the mortgage. The proposed rules would implement this requirement by mandating that QRMs must have a front-end DTI ratio of 28% and a back-end DTI ratio of 36%. In response to Request for Comment 123, UAMC suggests that the Agencies consider that fixing DTI ratios, especially at these levels, will exclude many borrowers from being able to obtain QRMs. In fact, the borrowers who would most likely be negatively affected by these ratios are, oddly enough, high-income borrowers. Many such borrowers have back-end ratios in particular of more than 36%, because of debts such as monthly student loan payments for college and post-graduate education. However, such borrowers typically have more than sufficient monthly income to meet all their monthly expenses, even including housing payments. The proposed DTI ratios would unfairly discriminate against such borrowers, forcing them to purchase more expensive non-QRM loans (if such loans are available at all) despite the fact that these borrowers typically have enough monthly income that the justification for DTI ratio requirements (i.e., ensuring that the borrower has sufficient income to meet standard monthly expenses, such as utilities, food costs and transportation) is inapplicable to them. As discussed above, these bright-line DTI ratios remove the ability of lenders to determine the actual financial status and ability to repay of borrowers through effective underwriting, substituting uniform standards for tailored analyses to the borrower's detriment. UAMC asks the Agencies to re-examine the proposed DTI ratio requirements in light of these considerations and to instead recognize that lenders are already addressing the issues behind the DTI ratio requirement through prudent underwriting, as discussed below.

Furthermore, UAMC urges the Agencies to consider that especially with regard to an ability to repay component of QRM requirements, but also with regard to QRMs more generally, the fact that the QRM requirements do not track the requirements of qualified mortgages ("QMs") under the Consumer Financial Protection Bureau ("CFPB")-mandated ability to repay amendments to Regulation Z will only create more onerous legislative burdens for lenders with no appreciable beneficial outcome. Under the Dodd-Frank Act, the definition of a QRM can be no broader than the definition of a QM. However, different entities are responsible for creating these definitions: the CFPB for QMs, and the Agencies for QRMs. Consequently, this creates a situation in which it is possible for the definitions of QRMs to change rapidly, as the Agencies must constantly monitor the status of the QM definition promulgated by the CFPB and amend the definition of QRM accordingly. Moreover, while the goals of QRMs and QMs are identical (the creation of stable mortgage products), the criteria for each are vastly different. For example, the QM neither requires a 20% down payment nor specifies qualifying DTI ratios.

The end result, then, is the creation of two separate, yet linked, regulatory requirements that lenders must meet, which can change quickly and yet which are ultimately redundant. This will likely place a large compliance burden on lenders, with the ultimate result of more expensive loans for borrowers, as lenders must increase costs of loans in order to provide for the resources necessary to monitor and meet these linking requirements. UAMC urges the Agencies to

consider conforming the QRM requirements more closely to the requirements of QMs, in order to ease the regulatory burden on lenders and ultimately reduce costs for borrowers.

VI. Impact of Risk Retention on FHA Program

Finally, UAMC urges the Agencies to consider the larger impact of the risk retention rule. As demonstrated above, vast numbers of potential borrowers would be unable to obtain a QRM based on the proposed criteria. Such borrowers could be forced to turn to more-expensive non-QRM loans. However, there is the possibility that lenders would be hesitant to write non-QRM loans, even at more expensive prices. Under the risk retention rule, as noted above, securitizers of non-QRM mortgage-backed securities would be required to retain at least 5% of the credit risk. Additionally, because of the premium capture cash reserve account feature of the proposed rules, such securitizers would be unable to monetize the excess spread immediately upon securitization through the sale of interest-only tranches. Many securitizers rely upon the ability to monetize the excess spread immediately, and have no desire to enter into securitization transactions in which they cannot do so. It is possible, and perhaps even likely, therefore, that the secondary market for non-QRM loans would shrink considerably or even dry up, leading to less lenders writing non-QRM loans.

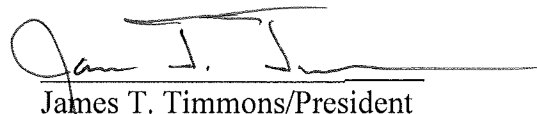
If this was the case, many borrowers who could not otherwise obtain a QRM loan due to the stringent QRM requirements would likely turn to the FHA program to obtain loans. Under the proposed rules, the FHA is free to write loans that do not have to meet the QRM requirements, since the NPR exempts the FHA from the risk retention requirements. Consequently, it is possible that the end result of the NPR would be an increase in FHA loans. This is contrary to the Federal government's stated intention of reducing consumer reliance on FHA loans.

VII. Conclusions

UAMC shares the Agencies' goal of ensuring that borrowers receive meaningful protection in the mortgage lending marketplace. However, should the Agencies proceed with the proposed regulations as written, particularly with respect to the inclusion of real estate-related fees paid to affiliates in the definition of "points and fees," the likely result will be increased costs and lack of choice for many borrowers, and may even prevent many otherwise-qualified and deserving borrowers from realizing the dream of owning their own homes. Therefore, UAMC strongly encourages the Agencies to carefully consider the issues UAMC has raised in this letter and to amend the proposed regulations accordingly.

UAMC appreciates the Agencies' consideration of these comments in response to the NPR.

Sincerely,



James T. Timmons/President