

August 1, 2011

Board of Governors of the Federal Reserve System  
Via email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)  
Docket No. 2011-1411; RIN 7100-AD 70

Office of the Comptroller of the Currency  
Via email: [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)  
Docket No. OCC-2011-0002; RIN 1557-AD40

Federal Deposit Insurance Corporation  
Via email: [Comments@FDIC.gov](mailto:Comments@FDIC.gov)  
RIN 3064-AD74

Securities and Exchange Commission  
Via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)  
Release No. 34-64603; File No. S7-14-11; RIN 3235-AK96

Federal Housing Finance Agency  
Via email: [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov)  
RIN 2590-AA43

Department of Housing and Urban Development  
Via electronic submission at [www.regulations.gov](http://www.regulations.gov)  
RIN 2501-AD53

Re: Notice of Proposed Rulemaking – Credit Risk Retention

Ladies and Gentlemen:

We appreciate the opportunity to provide comment on the above listed Agencies' joint proposed rule on Credit Risk Retention (the "Proposal"). Mutual of Omaha Bank is a growing community bank with operations in nine states and \$5 billion in assets. As a thrift institution, we make a substantial number of residential mortgage loans and would be greatly affected by the Proposal.

Mutual of Omaha Bank is a member of the Financial Services Roundtable and we fully support the comments it has submitted on this issue. Specifically:

- capping the amount of retention of securitized assets at 5 percent;
- the setting of a minimum risk retention period;
- allowing retained assets to be held by multiple sponsors;
- measuring credit risk by the assets in a new origination, and not the aggregate risk of the securitization pool; and
- allowing different financing structures beyond a vertical slice to be used in risk retention.

In addition to these points, we would like to offer specific comments on the limited scope of the Qualified Residential Mortgage (“QRM”) exemption. We support the Agencies’ efforts to interpret and implement the provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (“Dodd-Frank”) to improve underwriting and lending practices. However, we strongly oppose the approach with the definition of QRM, and believe such a strict limitation will harm legitimate lending operations and the communities they serve.

Section 941(b) of Dodd-Frank, *inter alia*, requires the Agencies to jointly prescribe regulations that (i) require a securitizer to retain not less than five percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party, and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G and the Agencies’ implementing rules.

As added by Dodd-Frank, Section 15G of the Exchange Act exempts certain types of securitization transactions from these risk retention requirements and authorizes the Agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. We understand that there are certain limitations on the Agencies’ ability to craft these regulations. However, the Proposal goes far beyond Dodd-Frank and imposes onerous requirements in at least five key areas: down payment, loan-to-value ratio, borrower’s credit history, debt-to-income ratio and loss mitigation.

### **Down Payment and Loan-to-Value Ratio**

The QRM exemption, as defined, is far too restrictive and will be harmful to creditworthy consumers who will only be able to find available credit at higher rates. A fundamental problem with the proposal is the 80 percent loan-to-value limit and down payment threshold, which requires a 20 percent down payment for a mortgage to qualify under the QRM exemption. The amounts are even higher for refinanced loans (25 percent) and cash-out refinance loans (30 percent). The median price of a home in Nebraska in 2010 was \$149,000, which would require a down payment of \$29,800. The median household income at that time was \$47,470, which would mean a typical family would require a cash payment of more than half of a year’s salary. These high percentages will force borrowers, who maintain good credit but that lack a substantial down payment, into more expensive mortgage products. The proposed QRM standard ignores the tenet that factors other than a high down payment reduce the rate of default.

The role of private mortgage insurance (“PMI”) in reducing defaults was also considered by the Agencies, which determined that PMI, in and of itself, does not reduce the potential for default. We urge the Agencies to reconsider the applicability of PMI as a factor. PMI does provide a significant benefit in offsetting potential losses and helping borrowers with low down payments qualify for loans.

Dodd-Frank added new Section 129C to the *Truth in Lending Act*, instructing the banking agencies to prescribe regulations that are “necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers.” The proposed down payment and loan to value ratio will only serve to have the opposite impact.

## **Debt-to-Income Ratio**

The proposal also requires that the borrower have a front-end debt-to-income ratio that does not exceed 28 percent and a back-end ratio that does not exceed 36 percent. These standards are too confining and remove discretion in underwriting decisions away from the originator, which could result in unusual or inappropriate lending results.

## **Credit History**

Rather than using the actual credit score of a borrower, the Proposal suggests a substitute. The Proposal requires that in order for a loan to qualify as a QRM, the lender must verify that the borrower (i) is not currently 30 or more days delinquent on any debt, (ii) has not been 60 days or more delinquent on any debt in the previous two years, and (iii) has not been in bankruptcy or had any property repossessed, foreclosed on or subject to a short sale in the previous three years. In a letter dated April 15, 2011, the House Financial Services Committee branded these provisions “far too strict” to meet the intended purpose of Dodd-Frank. We agree, and believe denying individuals access to a reasonably priced home loan due to circumstances of the economic crisis that may be temporary or beyond their control serves only to punish those Dodd-Frank intended to protect. Lenders always take a borrower’s credit history into account when making underwriting decisions, and should not be bound by hard and fast rules that might impair reasonable lending practices.

We also join much of the industry in our concern about the impact of replacing automated underwriting with a manual review of credit files, which would be required to comply with the Proposal. Manual review will increase lender costs and ultimately increase the cost of all loans. The process will be slowed and more error likely will result. A more suitable approach would be to consider factors affecting credit history in conjunction with a credit score, with some debts (for example, medical debts) that do not reflect on a debtor’s character, excluded entirely from the definition of debts under the QRM eligibility requirements. Moreover, we urge the Agencies to amend the Proposal to lengthen the number of days past due for debts that would disqualify a borrower.

## **Loss Mitigation**

The proposed loss mitigation requirements would dictate the time and manner in which lenders must conduct “loss mitigation activities” in the event of borrower default. This rule, which is not required by Dodd Frank, goes far beyond the legislation’s purpose of mitigating risks in the MBS market.

Mutual of Omaha Bank understands that targeted loan modifications can benefit both the borrower and the lender and we continually work with our borrowers before resorting to foreclosure. However, the decision of whether to modify a loan is a complicated process that must be decided on a case-by-case basis. To dictate that banks must always conduct loan modifications based solely on whether the net present value of the proceeds realized by such activities would exceed the value of a recovery through foreclosure interferes in a private loan

transaction and is an ineffectual standard. Moreover, the term “loss mitigation activities” is a broad term that is not defined in the proposed rules. This will lead to varying levels of compliance across the industry and encourage litigation.

Finally, there are extensive state laws governing the rights and remedies of parties to a residential loan transaction. By imposing federal rules in this area, the proposal seeks to preempt state real property law. This unusual and potentially unlawful result should be avoided, especially considering that the original reason for the Proposal - the risks inherent in the mortgage-backed securities market - would not be improved by dictating loss mitigation strategies.

## **Conclusion**

Section 941 provides broad discretion to establish the scope of the QRM exemption. For the foregoing reasons, we strongly urge the Agencies to adhere to Dodd-Frank’s statutory language by removing, or working with the industry to limit, the requirements for credit history, loan-to-value, debt-to-income ratio, down payment requirements and the loss mitigation rules. Each of these proposals has the potential to harm legitimate lending operations and limit the flow of credit to qualified borrowers. Once again, we appreciate the opportunity to comment on this very important issue. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marjorie Heller".

**Marjorie Heller**  
*Chief Financial Officer*  
*Mutual of Omaha Bank*