June 21, 2011

BY FEDERAL EXPRESS

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

Re: Credit Risk Retention
RIN 3064-AD74

Dear Mr. Feldman:

The Virginia Housing Development Authority (VHDA) hereby provides the following comments to the Federal Deposit Insurance Corporation on RIN 3064-AD74 as a follow-up to our previous comment letter dated June 6, 2011.

1. Request to Eliminate Default Mitigation/Servicing Responsibilities as Requirements for Qualified Residential Mortgages. For the following reasons, the default mitigation/servicing responsibilities for Qualified Residential Mortgages set forth in Subpart D, Section 15(b)(13) of the proposed regulations should be eliminated:

- The intent of the Dodd-Frank Act was that the QRMs would meet certain loan underwriting characteristics, and the proposed provisions are indirectly imposing servicing requirements by specifying that the lender commit to these servicing responsibilities in the loan documentation. The specific language of the act directs regulators to define the QRM by taking into consideration "underwriting and product features that historical loan performance data indicate lower the risk of default." Servicing standards are neither "underwriting" nor "product features."

- Absent clarifying language to the contrary, the implication of the requirement is that the loss mitigation policies at closing must remain in effect for the life of the loan, thereby preventing changes in those policies and procedures as conditions change and loss mitigation methods evolve and creating administrative problems for the servicers which may be required to follow multiple procedures depending on which procedures were in effect at the time of the loan closing. These provisions mandating servicing requirements should not be included in the criteria for QRMs, or language should be included clarifying that the lender has no obligation to maintain and follow for the life of the loan the loss mitigation procedures that are in effect at the loan closing.

- Finally, it should be noted that there is an ongoing interagency effort among certain Federal regulatory agencies to develop national mortgage servicing standards that

would apply to servicers of residential mortgages. Servicing requirements specifically for QRMs should not be adopted when there is an effort to create national servicing standards. This creates the possibility of conflict and confusion between the two sets of potentially overlapping requirements.

For the above reasons, it is recommended that the default mitigation/servicing responsibilities be eliminated from the regulations as requirements for Qualified Residential Mortgages.

2. Clarification or Deletion of Default Mitigation/Servicing Requirements for Qualified Residential Mortgages. The proposed regulations as written are vague and difficult to construe for compliance purposes. It is absolutely critical that lenders and investors be able to conclusively determine if the loans are QRMs. The proposed regulations would make any such determination difficult, if not impossible. Therefore, should the default mitigation/servicing requirements for QRMs not be eliminated from the regulations, it is suggested that the following clarifications be made to the regulations:

- The regulations seem to require only that the loan documents contain a commitment to having certain servicing policies and procedures, but those policies and procedures are required to mandate certain loss mitigation and other actions (including compensation and bond disclosure requirements) by the lenders. The regulations do not state to whom this commitment is made, whether the borrower has a right to the loss mitigation procedures in effect at loan closing, or whether the commitment is enforceable by any person, particularly the borrower. The provisions should contain a statement that they are not intended, and shall not be construed, to create a right of the borrower to any loss mitigation procedures or any private cause of action by the borrower to enforce the provisions. This is particularly important given the lack of clarity in the regulations as to what types of loss mitigation are to be offered and the standards to be applied by lenders in determining the appropriate loss mitigation in individual cases.

- The requirement in Section 15(b)(13)(i)(A) is unclear. The concern is whether the loan documents mandate that the lender take loss mitigation action, including loan modification, if a net loss will be avoided. The regulations should be clarified to state that the loss mitigation is to be provided only if the lender's (and any mortgage insurer's or guarantor's) requirements and underwriting criteria for loss mitigation are satisfied.

- The requirement in Section 15(b)(13)(i)(B) seems to imply, but does not state, that the lender is to provide loss mitigation if the ability to repay and underwriting criteria are satisfied. The regulations should be clarified to state that the lender may take other requirements for loss mitigation into account, such as timely submission by the borrower of complete and correct documentation and verification, owner occupancy

of the property, maintenance of hazard insurance, the status of the title to the property, and satisfactory property condition.

- It is not clear what "initiate" means in Section 15(b)(13)(i)(C). Does this mean communicate or offer loss mitigation to the borrower or actually implement the loss mitigation? This requirement should be revised to refer to the lender initiating contact with the borrower about loss mitigation options.

- The requirement in Section 15(b)(13)(i)(D) is too vague for a determination whether any type of compensation would or would not be consistent with the loss mitigation procedures. This provision is totally unrelated to the loan's "underwriting" and "product features" and should be deleted, particularly since the requirement for loss mitigation procedures is mandatory.

- The requirement in Section 15(b)(13)(i)(E) is unclear as to what the procedures are to be or are to accomplish with respect to "addressing" the subordinate loan upon default on the first loan. The regulations need to provide clarity as to the intent of this provision.

- With regard to the requirement in Section 15(b)(13)(i)(F), the timing of disclosure to the investors of HFA bonds is addressed in SEC regulations governing the "deemed final" OS, and it is unclear if "reasonable period of time" is requiring an earlier disclosure. This provision relating to disclosure to investors should be deleted because it is clearly not related to the loan's "underwriting" and "product features" contrary to the language and intent of the act, as discussed above.

- The requirement in Section 15(b)(13)(i)(G) appears to require the transferee servicer to comply with the policies and procedures of the transferor servicer, and such a result would be extremely problematic for the transferee servicer, since the implication of the provisions is that for the life of the loan the transferee servicer must follow the transferor servicer's procedures that were in effect at the loan closing.

If you have any questions or need any additional information concerning our comments, please feel free to contact VHDA.

Sincerely,

Susan F. Dewey
Executive Director