



July 22, 2011

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Attn: Comments RIN 3064-AD74

Dear Mr. Feldman:

The Homeownership Preservation Foundation ("HPF") would like to thank the Federal Deposit Insurance Corporation ("FDIC") and the other Federal agencies with whom you have been working¹ for the opportunity to comment in response to proposed rules implementing the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934 (15 USC 780-11), as added by section 941 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Public Law 111-203).

The Homeownership Preservation Foundation is an independent national nonprofit organization dedicated to helping distressed homeowners navigate financial challenges, avoid mortgage foreclosure, and find a path to sustainable homeownership. HPF is a HUD-approved housing counseling national intermediary. Through our Homeowner's HOPE® Hotline, 888-995-HOPE®, HPF provides comprehensive homeowner education and foreclosure prevention counseling for free, 24 hours a day, 7 days a week, 365 days a year, in over 170 languages. Since 2007, HPF has served over four million distressed homeowners, an average of 5,000 persons each business day, who depend upon HPF as a trusted, neutral source of assistance. HPF develops innovative and sustainable solutions to preserve and expand homeownership through consumer education and counseling programs. As a result, HPF has had a front-row seat in observing the difficulties faced by homeowners facing imminent foreclosure and recognizes the need to help future homeowners avoid similar life-altering challenges. For more information about HPF please visit www.995hope.org.

As part of the rule-making process required under section 941 of the *Dodd-Frank Act* you have invited comment on the proposed interagency rule that, once implemented, would impose certain credit risk retention ("skin in the game") standards on loan originators and securitizers in order to guard against a recurrence of the mortgage foreclosure crisis from which our nation is now emerging.

¹ Office of the Comptroller of the Currency, Treasury ("OCC"); Board of Governors of the Federal Reserve System ("Board"); U.S. Securities and Exchange Commission ("Commission"); Federal Housing Finance Agency ("FHFA"); and, Department of Housing and Urban Development ("HUD")

Based upon our real-life experience in dealing with homeowners in crisis and the servicers of their loans, HPF urges that as you assess the factors that determine the degree of risk associated with any given loan (and the commensurate risk retention obligation associated with that loan), you recognize this simple fact: a financially literate borrower should be less risky and the lower the risk in the loan the less “skin in the game” should be required of the originator or securitizer of a loan extended to such a borrower; conversely, the less financially literate a borrower is, the more risky the loan is likely to be and the more “skin in the game” should be required of the originator or securitizer of a loan extended to such a borrower.

HPF and other housing counseling agencies currently operate on the front lines of the battle against foreclosure. Battling on the front line of the housing crisis day-in and day-out has convinced us that many borrowers were ill-served by the origination process, leaving them ill-prepared for homeownership. Based on the millions of consumer interactions where our assistance has been sought we have learned and are convinced that the process of risk minimization begins with an investment in mortgage education and ongoing support. Equipping consumers with these simple tools helps them make more sound, better informed and less risky decisions. And for those consumers who might eventually face the prospect of default, these same tools can serve as significant aids in navigating a means to recovery.

The notice of proposed rulemaking makes it clear that there is a separate interagency effort underway to develop national mortgage servicing standards that would apply to servicers of residential mortgages. Some might suggest that a decision as to whether or not to require that tools to improve the financial literacy and knowledge base of consumers might best be deferred to that future rulemaking process. While HPF believes that mandatory counseling should be an integral element of any future mortgage servicing regulations, we are also convinced that because of the favorable impact pre-purchase counseling has upon the performance of a mortgage borrower and, therefore, the riskiness of that loan, mandatory housing counseling should clearly be included in any rule intended to establish standards of credit risk retention.

HPF strongly recommends that the proposed rule be amended to mandate housing counseling where appropriate as a means of reducing risks in the mortgage origination system and, particularly, in loans created outside the QRM definition. *In particular, borrowers who opt for non-QRM mortgages should be mandated to complete a pre-purchase mortgage education and counseling program by a HUD-Approved, independent, non-profit, third party independent counseling agency to ensure understanding of the terms and conditions of the mortgage product and the related financial responsibilities of homeownership.*

HPF is convinced that a final rule that mandates pre-purchase education and ongoing homeowner counseling would be a winning scenario for all parties:

- Consumers would “win” because if they would be better equipped to manage the risks and responsibilities of homeownership; Investors, servicers and securitizers would “win” as their loans would have been extended to more capable borrowers;
- Federal supervisory agencies would “win” since the institutions they regulate and insure would have stronger and more stable assets on their balance sheets; and,
- Taxpayers would “win” since the potential for a future taxpayer bailout of the housing industry would be greatly reduced.

Consistent with the above, we now offer responses to specific questions contained in the notice of proposed rulemaking:

106: Is the overall approach taken by the Agencies in defining a QRM appropriate?

HPF believes that the *overall* approach taken by the Agencies in defining a QRM is *appropriate but not complete* because it fails to factor in the significant impact counseling can and does have on the overall performance of the loan over its life. Our experience and that of the agencies with which we work has demonstrated the value of mortgage financial education and counseling in improving the credit performance of a mortgage borrower. In addition, we believe that those borrowers utilizing the resources available through the counseling industry will benefit from a close alignment with the important work of the Consumer Protection Financial Bureau’s (“CFPB”) on improving financial literacy.

Provisions contained in the *Dodd-Frank Act* itself implicitly acknowledge the great value derived from housing counseling. Consider, for example, that Section 1414 of the *Dodd-Frank Act* amends Section 129C of the Truth-in-Lending Act by adding, among other things, a new Section (f)(2) which requires that:

“(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the

consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.”

While this passage specifically relates to loans with negative amortization, it is included because these loans impose a higher risk burden on consumers. Obviously, other types of loans outside of the QRM definition may also pose similar risks worthy of homeownership counseling, warranting the inclusion of mandatory homeownership counseling in the pending credit risk retention rule.

125: The Agencies solicit comment on whether the definition of QRM should include servicing requirements.

While the Credit Risk Retention notice of proposed rulemaking states that there is a separate interagency effort to develop national mortgage servicing standards that would apply to servicers of residential mortgages, regardless of whether the mortgages are QRM, are securitized or are held in portfolio, the definition of QRM in this Credit Risk Retention rule should be modified to include what some may consider servicing requirements to the extent that they demonstrably impact the overall performance of the loan over the life of the loan. Pre-purchase counseling should be included in the definition of QRM, since our experience and that of the agencies with which we work has demonstrated that such loans extended to borrowers with the benefit of pre-purchase counseling perform better than loans extended to borrowers without the benefit of pre-purchase counseling.

126(a): Should the proposed servicing requirements be more or less robust?

The proposed servicing requirements should be more robust.

126(b): If so, how should the proposed servicing requirements be changed?

The proposed servicing requirements should be changed to require that at the first sign of delinquency borrowers receive appropriate counseling and those in danger of foreclosure receive appropriate pre-foreclosure counseling.

139: For commenters responding to any of the foregoing questions or with recommendations for different or additional approaches to servicing standards, are such approaches consistent with the statutory factors the Agencies are directed to take into account under the QRM exemption?

Yes; including pre-purchase counseling, delinquency counseling and pre-foreclosure counseling as additional servicing standards are consistent with the statutory factors the Agencies are directed to take into account under the QRM exemption.

Section 15G(e)(2)(A) of Securities Exchange Act of 1934 as amended by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act specifically states that:

Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

“(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

“(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

Including pre-purchase counseling, delinquency counseling and pre-foreclosure counseling as additional servicing standards clearly would be consistent with and conform to the above statutory requirements in that it would:

- help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization;
- improve the access of consumers to credit on reasonable terms;
- and, clearly be in the public interest.

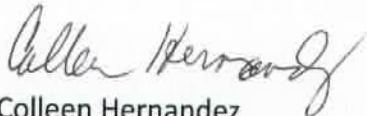
140: The Agencies are in the process of developing national mortgage servicing standards, which would cover all residential mortgage loans, including QRMs. In light of this, the Agencies seek comment on whether the establishment of national mortgage servicing standards is a more effective means to address the problems associated with servicing of all loans.

The establishment of national mortgage servicing standards may be a more effective means to address problems *generally* associated with servicing of residential mortgage loans. However, since there is significant evidence that pre-purchase, delinquency and pre-foreclosure counseling reduces the riskiness of loans, it logically follows that the risk retention requirement for originators and/or servicers of such loans should be proportionally less. For that reason HPF believes that counseling requirements should be incorporated into the pending credit risk retention rule itself – regardless of whether or not it is subsequently included in the comprehensive national mortgage servicing standards being developed independent of this rulemaking.

For the reasons set forth above the Homeownership Preservation Foundation strongly urges you and your colleagues to include pre-purchase, delinquency and pre-foreclosure counseling requirements in the final rule implementing the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934 (15 USC 780-11), as added by section 941 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Public Law 111-203).

Thank you for considering these important recommendations. If you or your staff have any questions or would like additional information please don't hesitate to contact me at 202.480.2774 or by email at chernandez@995hope.org.

Respectfully,



Colleen Hernandez
President and CEO