MORTGAGE BANKERS ASSOCIATION®
Investing in communities

November 9, 2010

The Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Shaun L. S. Donovan
Secretary of Housing and Urban Development
United States Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

The Honorable Mary L. Schapiro
Chairman
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave
Washington, DC 20551

John G. Walsh
Comptroller of the Currency (Acting)
250 E Street, SW
Washington, DC 20219-0001

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 2055

Ladies and Gentlemen:

The Mortgage Bankers Association[1] (MBA) appreciates your efforts to implement Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA)[2] by issuing regulations to require securitizers to retain a portion of the credit risk of assets they securitize.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] Public Law 111-203, (July 21, 2010).

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Considering the enormous potential impact of these regulations on the availability of mortgage credit, and therefore affordability of homeownership for generations to come, and the short time allotted by the DFA for developing the rule, MBA respectfully submits the following perspectives for the federal agencies to consider when establishing the "Qualified Residential Mortgage" (QRM) exemption from risk retention requirements. We also submit the attached "Recommendations for Regulatory Definition of Qualified Residential Mortgage" for your consideration.

Background
DFA requires the federal banking agencies, the Department of Housing and Urban Development (HUD), the Federal Housing Finance Agency (FHFA) and the Securities and Exchange Commission (SEC) to jointly prescribe rules requiring securitizers to retain an economic interest of the credit risk of assets they securitize. The law also requires the regulators to establish a QRM exemption from such risk retention requirements. The QRM is intended to ensure sound underwriting and lower risk of default, and is to be established based on criteria such as:

- Documentation of borrower's financial resources;
- Debt-to-income (DTI) standards;
- Mitigating potential for payment shock on adjustable rate mortgages through product features and underwriting standards;
- Mortgage insurance or other credit enhancements to reduce risk of default; and
- Prohibiting use of loan features that have been demonstrated to exhibit a higher risk of borrower default.

MBA's Perspectives

1. The potential impact on the availability of credit stemming from the QRM risk retention exemption cannot be overestimated. The design of the QRM and the "Qualified Mortgage" (QM) under the "ability to repay" provisions of Title XIV of the DFA will largely govern who can and cannot achieve homeownership for years to come. Few loans to ordinary customers are likely to be made outside the QRM construct; the loans that are made will be costlier and likely to be made only to more affluent customers.

2. While the rules should not condone risky lending practices, unnecessarily constraining the mortgage market will not only deny the American dream of homeownership to many qualified persons, it will further depress the housing market and threaten the economic recovery. We must also remember that many of the loan products and characteristics under consideration to be restricted were, for many years, not problematic when underwritten prudently.

3. Because underwriting is an art and not a science, lenders should retain discretion within acceptable parameters to assure that qualified borrowers are not unduly denied credit for sustainable mortgage products. Where possible, regulators should avoid establishing static, prescriptive criteria that do not allow lenders the ability to consider compensating factors in meeting the financing needs of qualified borrowers. Instead, the QRM should be defined using flexible guidelines rather than specific parameters in order to preserve lenders' ability to adapt to borrowers' needs including regional and other demographic nuances.

4. Compliance is admittedly difficult to ensure without explicit metrics. To the extent such metrics are established, they should be clear and the choice of particular metrics should be supported by empirical data that correlate them to a reduced risk of default.

5. Regulators should synchronize the QRM definition for risk retention purposes, and the QM definition for the purposes of the "ability to pay" rebuttable presumption of Title XIV of the DFA. The timelines for drafting, proposing, finalizing and implementing these two separate regulations must be coordinated now – they should be concurrent, not sequential.

6. Regulators should be mindful of the relationship between the QRM definition and Federal Housing Administration (FHA) eligibility requirements in light of FHA's exemption from risk retention requirements. Unless the QRM definition is calibrated properly, there is a danger that the FHA program could be over utilized.

In closing, we encourage the federal agencies to refer to the recommendations made by the Board of Governors of the Federal Reserve System (Federal Reserve) in the Federal Reserve's recent report to Congress on risk retention and securitization. MBA believes the Federal Reserve's recommendations will help to ensure that the regulations promote the purposes of the DFA without unnecessarily reducing the supply of credit. We share your goals of protecting consumers and returning liquidity to the mortgage markets. As indicated, we have attached recommendations for specific requirements for a Qualified Residential Mortgage.

We look forward to working with you on these important issues.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

Attachment

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Recommendations for a Regulatory Definition of "Qualified Residential Mortgage"

The Mortgage Bankers Association (MBA) submits the following recommendations for specific characteristics to be included in a regulatory definition of a "Qualified Residential Mortgage" (QRM) for the purposes of establishing an exemption from risk retention requirements under Section 941 of the Dodd-Frank Act. QRMs should:

- **Not Include Certain Prohibited Terms including:**
  - Balloon payments.
  - Terms longer than 30 years (although terms less than 30 years would be permitted).
  - Negative amortization.

- **Be Fully Documented:** Notably, this term and accompanying requirements for "verification" should be defined in the rule. MBA can provide examples.

- **Not Encompass Adjustable Rate Mortgages (ARMs) Which Adjust In Less than Three Years after Origination:** Based on performance data, ARMs which have fixed payment periods of at least three years to prime borrowers should qualify as QRMs as long as other factors assure sound underwriting. Specifically, requiring full documentation and underwriting at the fully indexed rate will assure that loans are sustainable and do not subject borrowers to unmanageable payment shock. However, we recognize that underwriting ARMs based on the highest rate within the first five years might need to be set as the minimum in order to synchronize the QRM with the "Qualified Mortgage" definition of Title XIV of the DFA. Notably, the Home Ownership and Equity Protection Act (HOEPA) rules protect subprime borrowers with respect to adjustable loans by requiring documentation, income verification and underwriting to the fully indexed rate.

- **Only Include Debt to Income Ratio (DTI) Standards with Compensating Factors:** MBA members are particularly concerned about establishing overly rigid DTI limits. This comes from their experience day-in and day-out working with borrowers, considering compensating factors and being able to originate sustainable mortgages. Under the HOEPA rules for higher-priced loans, creditors must use DTI ratios to determine a borrower's ability to repay but specific numerical standards are not prescribed. If specific numerical standards are prescribed under these rules, we believe DTIs should not be required to be lower than 50 percent, with specific compensating factors defined in the regulation that would permit higher DTIs (e.g. significant levels of liquid assets or residual income). Fannie Mae, Freddie Mac and others have permitted 50 percent or higher DTIs with compensating factors. Also, if specific numerical standards are prescribed, care must be taken to ensure that the ingredients of debt and income are well-defined. These provisions should be detailed as a safe harbor for both QRM and QM purposes. Limits should not be established unless they are supported by empirical data that correlate them to a reduced risk of default.

- **Require Credit Enhancement, Such as Mortgage Insurance, for Mortgages with a Loan-to-Value Ratio (LTV) Greater than 80 percent:** Loans with LTVs higher than 80 percent should be required to have some type of credit enhancement, such as mortgage insurance. Refer to the Fannie Mae/Freddie Mac charter acts for other examples, including participations.

- **Encompass Interest-Only Mortgages if other Requirements are Put in Place:** Interest-only mortgages should be permitted so long as they are underwritten at the fully indexed/fully amortizing payment and are originated subject to other requirements including requirements for documentation and verification. Regulators could also consider adding mandatory counseling and/or escrow account components for particular categories of homeowners.