NCBANKERS
1897 NORTH CAROLINA BANKERS ASSOCIATION

P. O. BOX 19999, RALEIGH, NC 27619-9916 / 800-662-7044 / FAX: 919/881-9909

July 19, 2011

Office of Comptroller of Currency
250 E. Street, S.W., Mail Stop 2-3
Washington, DC 20219

Board of Governors of the Federal Reserve System
Attn: Jennifer J. Johnson, Secretary
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

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

Securities and Exchange Commission
Attn: Elizabeth M. Murphy, Secretary
100 F Street, N.E.
Washington, DC 20549-1090

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

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

Re: Proposal to Establish Credit Risk Retention Requirements, Qualified Residential Mortgage Exemption
76 Federal Register 24090, April 29, 2011

Ladies and Gentlemen:

The North Carolina Bankers Association (NCBA) is pleased to respond to a request for comment regarding the joint proposal to implement the requirements of Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The NCBA is a trade association representing the interests of 134 member banks, savings institutions, and trust companies. The focus of this comment letter is exclusively on the Qualified Residential Mortgage exemption.

Section 15G of the Exchange Act, as added by section 941(b) of the Dodd-Frank Act, generally requires the Agencies, the Commission, and, in the case of the securitization of any ‘‘residential mortgage asset,’’ together with HUD and FHFA, 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 (ABS), 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. 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.

Section 941 gave broad discretion to the Agencies to establish the scope of the QRM exemption. Based on the proposal's lack of clear and workable standards, the NCBA urges the Agencies to withdraw the current proposal. We further encourage the Agencies to request participation from the industry to re-propose the regulations in a straightforward and clear manner to facilitate industry compliance.

The QRM exemption, as defined, is restrictive and will be harmful to creditworthy consumers who will only be able to find available credit at higher rates. The first problem with the proposal is the down payment requirement. As proposed, a 20% down payment would be required for a mortgage to qualify under the QRM exemption. The amounts are even higher for refinance loans and cash out refinance loans, 25% and 30%, respectively. 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 reality that factors other than a high down payment reduce the rate of default.

Private mortgage insurance's (PMI) role in reducing defaults was also considered by the Agencies. The Agencies 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.

The proposal requires, in addition to the above, that the borrower also have a front end debt-to-income ratio (DTI) (borrower's monthly housing debt to borrower's monthly gross income) that does not exceed 28% and a back end ratio (total monthly debt to monthly gross income) that does not exceed 36%. These standards for DTI, just as the other factors, are inflexible and too confining. This proposal takes discretion in underwriting decisions away from the originator and could result in unusual and inappropriate results.

Credit history restrictions have also been taken too far. Rather than using the actual credit score of a borrower, the proposal suggests a substitute. While we understand the Agencies' reluctance to utilize any specific credit scoring mechanism, we also believe objective methods, such as a credit score, should be part of the final rule. There is also a great concern about the impact of replacing automated underwriting with a manual review of credit files, which would be required to comply with the proposed rule. Manual review will increase lender costs and ultimately increase the cost of all loans. The process will be slowed and more error will likely result. A sounder approach would be to consider factors affecting credit history in conjunction with a credit score.

Another issue of concern is that the proposed rule exempts from the risk retention requirements loans sold to Fannie Mae and Freddie Mac while they remain in conservatorship. The proposed QRM definition coupled with the risk retention requirements will provide a significant advantage to the GSEs. This competitive advantage will result in the private securitization market being greatly inhibited. If Fannie and Freddie can buy loans without risk retention, private securitizers will find it more difficult to compete. The market will certainly continue to favor Fannie and Freddie if they have the option to sell to them without retaining risk. The continued favoring of Fannie and Freddie makes it more difficult for Congress and the Administration to resolve the conservatorship of the GSEs and establish a thriving private securitization market.

In light of the weaknesses in the outstanding proposal, the Qualified Residential Mortgage exemption should be re-proposed with clearer and more workable standards. The exemption as it stands presents difficulty in qualification and will restrict credit and increase borrower costs. We urge the Agencies to work with industry participants in crafting a new proposal.

Sincerely,

Meghan Best

Meghan Best
Associate Counsel