CUNA
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August 1, 2011

Ms. Elizabeth M. Murphy, Secretary,
Securities and Exchange
Commission
100 F Street, NE
Washington, DC 20549-1090

Mr. Jennifer J. Johnson, Secretary,
Board of Governors of the
Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

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

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, NW, 4th Floor
Washington, D.C. 20552

Mr. John G. Walsh, Acting Comptroller
Office of the Comptroller of the
Currency
250 E Street, SW, Mail Stop 2-3
Washington, D.C. 20219

The Honorable Shaun Donovan,
Secretary,
Regulations Division
Office of General Counsel
Department of Housing and
Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: Credit Risk Retention Proposed Rules
OCC: Docket No. OCC-2011-0002
FRB: Docket No. R-1411
FDIC: RIN 3064-AD74
SEC: File Number S7-14-11
FHFA: RIN 2590-AA43
HUD: Docket No. FR-5504-P-01

Dear Sirs and Madams,

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Interagency request for comments regarding its proposed rules to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 780-11), as added by Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. By way of background, CUNA is the nation's largest credit union trade organization, representing approximately 90 percent of our nation's 7,600 state and federal credit unions, which serve approximately 93 million members.

Background

The proposed credit risk retention rules require securitizers, but not most credit originators, to retain an economic risk of at least 5% of the aggregate credit risk of the assets collateralizing an issuance of an asset-backed security (ABS). The proposed rules exempt certain types of securitization transactions from these risk retention requirements. The two major exemptions are securities backed by assets consisting entirely of "qualified residential mortgages" (QRMs) and securities backed by certain commercial mortgages, commercial loans, and automobile loans meeting specific underwriting standards. The proposed rules also provide for separate exemptions for loans sold to Fannie Mae, Freddie Mac, as well as for federally insured loans, such as USDA, FHA, and VA loans.

For a loan to qualify as a QRM under the proposed definition, the following criteria, among other things, must be met: the borrower must put a minimum of a 20% down payment (in addition to paying all closing costs) in the case of a purchase transaction resulting in a minimum loan to value ratio of 80%, and private mortgage insurance cannot be used to support the down payment; the borrower must have a maximum debt-to-income ratio of 28% at the start of the loan; and the borrower may not have any 60-day delinquencies in the last two years, or bankruptcy, foreclosure or short sale in the last 36 months.

CUNA's Views

CUNA supports the creation of an efficient, effective, and fair secondary market with equal access for lenders of all sizes. We also support strong oversight and supervision of securitizers to ensure safety and soundness. However, CUNA strongly opposes the proposed definition of a QRM as included in the proposed risk retention rules. The proposed QRM standard is simply too narrow, setting stringent underwriting standards that go beyond what was contemplated under the Dodd-Frank Act.

The QRM proposal was not directed at credit unions and the National Credit Union Administration (NCUA) was not one of the agencies mandated by the Dodd-Frank Act to develop the credit risk retention rules. Additionally, many credit unions hold a significant portion of their loans in portfolio and any loans they sell to Fannie Mae and Freddie Mac would be exempt from the credit risk retention requirements while the GSEs remain in conservatorship.

Nonetheless, credit unions are seriously concerned about the QRM proposal. As discussed below, our overarching concern is that the QRM will become a template that regulators will seek to impose on all home mortgage loans, whether they are securitized or not. Such a result would severely limit the ability of credit unions to tailor mortgage loans to meet their members' needs. Moreover, the stringent definition of a QRM could effectively shut out an entire class of otherwise qualified borrowers from the market for low-cost financing and could potentially dry up mortgage liquidity for small lenders.

Because of our members' concerns, CUNA has joined the Coalition for Sensible Housing and is listed on its white paper, "Proposed Qualified Residential Mortgage Definition Harms Creditworthy Borrowers While Frustrating Housing Recovery." The report was released and submitted to the agencies on June 22, 2011.

In crafting the concept of QRM, Senators Mary Landrieu (Democrat, Louisiana), Kay Hagan (Democrat, North Carolina) and Johnny Isakson (Republican, Georgia) considered and intentionally omitted a minimum down payment requirement.[1] Since the proposed rules were released, these Senators have repeatedly publicly expressed their concerns over the 20% minimum down payment proposal. Additionally, 158 members of Congress submitted a comment letter on May 31, 2011 opposing the proposed QRM standard, pointing out that Section 941 of the Dodd-Frank Act "specifically names 'mortgage guarantee insurance' as one of the factors to be included in the QRM definition" and that the law "recognizes that private capital does not exclusively come from a lender or an investor; it can be provided by a private mortgage insurer."[2] The U.S. House of Representatives Committee on Financial Services has also expressed concern with the high 20% down payment requirement.[3]

A minimum down payment of 20% - without permitting assistance from private mortgage insurance - is simply too high for a QRM exemption, as there is credible evidence that high minimum down payments alone are not always a significant factor in reducing defaults compared to underwriting and other mortgage product features.[4] Many factors combine to create a low-risk mortgage loan: down payment, credit history, employment history, ratio of payment to income, etc. For this reason, many well-underwritten loans have down payments of less than 20%. Thus, provided each mortgage is properly underwritten, credit unions can and do structure very low-risk loans to meet their members' needs – even where a member does not have a 20% down payment. Indeed, with delinquency rates at a fraction of those of the major banks, credit unions have demonstrated an ability to safely originate high loan-to-value mortgages.[5] Having the ability to tailor mortgages to members' needs is particularly important for credit unions as member-owned financial institutions.

Additionally, by limiting a QRM to only those borrowers who have not had any 60-day delinquencies in the last two years, or bankruptcy, foreclosure or short sale in

[1] See February 16, 2011 letter from Senators Landrieu, Hagan and Isakson to the QRM regulators.
[2] Comment from 158 Members of the U.S. House of Representatives, May 31, 2011.
[3] U.S. House of Representatives Committee on Financial Services Comment Letter, April 15, 2011.
[4] See Coalition for Sensible Housing, "Proposed Qualified Residential Mortgage Definition Harms Creditworthy Borrowers While Frustrating Housing Recovery," June 22, 2011.
[5] See, e.g., Leighton Hunley & Peter Johnson, "Why do credit unions see superior loss experience in residential real estate loans?", MILLIMAN INSIGHT (Dec. 10, 2010).

the last 36 months, the proposal eliminates many otherwise qualified borrowers who may have fallen victim to hard times during the recent economic downturn. Many borrowers who may have been forced to face financial difficulties during the financial crisis, but have since regained financial security and are otherwise qualified for a low rate mortgage with the best features would be completely shut off from obtaining a QRM.

As it is likely that securitizers' additional costs with complying with the risk retention requirement for non-QRMs will be passed down to originators and then on to borrowers, the cost to the borrower of a non-QRM will necessarily be higher than for a QRM. Consequently, under the unduly narrow proposed QRM standard, borrowers who are otherwise qualified but who either have not been able to save enough for a 20% down payment (plus closing costs) or happen to have fallen victim to the financial crisis but have since successfully recovered would be automatically denied access to the lowest rate loans with the safest features.

Along these lines, although the proposed QRM is intended to be the exception rather than the rule in the private mortgage market, it runs a significant risk of turning into the standard for mortgages. This is because the National Credit Union Administration (NCUA), which supervises the safety and soundness of all federally insured credit unions, generally requires credit unions to adhere to Fannie Mae and Freddie Mac underwriting standards. As the status of GSE reform is unknown, in the absence of a replacement for the existing GSEs, a QRM standard could be viewed by NCUA as necessary to ensure any potential safety and soundness concerns are met.

It is likely that if the proposed QRM rule is implemented, FHA will immediately become the favored and perhaps exclusive channel for mortgages in excess of 80% loan-to-value. Credit unions have not historically had significant FHA lending, as a typical credit union member is best served by utilizing conventional financing. A standard credit-profile-borrower making a down payment of 5% or more will generally have lower payments with a loan insured by private mortgage insurance, rather than with FHA.

It is also important to note that credit unions are concerned with the definition of "points and fees" included in the QRM proposal. A 3% cap (of the total value of the loan) on the total points and fees paid by the borrower could be considered low for some loans, especially those with a lower dollar value. Many costs involved in originating mortgages are fixed costs (such as the cost of an appraisal and closing agent), which can in some instances potentially amount to more than 3% of the total value of the loan, especially in junior mortgage situations. For loans that otherwise qualify as QRMs, CUNA believes that lenders should have a measure of flexibility, within reason, to exceed the proposed three percentage point cap on points and fees as part of an overall interest rate risk mitigation strategy, while continuing to maintain the loan's QRM designation.

Closing

The QRM standard as currently proposed not only creates unnecessary barriers for qualified borrowers, but it also limits the flexibility credit unions have in tailoring loans to their members' needs, and could potentially make it difficult for small financial institutions like credit unions to make non-QRM loans. We urge the agencies to go back to the drawing board to re-develop the QRM and issue a new proposed QRM definition for public comments. A properly defined and implemented QRM standard will have the possibility of benefiting the housing markets for many years, and it is vital that the rules governing risk retention are appropriately designed to stand the test of time, regardless of the state of the capital markets or the ultimate fate of the GSEs.

Thank you for the opportunity to comment on the proposed credit risk retention rules. If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6776.

Sincerely,

Kristina A. Sadlak
Counsel for Special Projects