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August 1, 2011

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OCC-2011-0002

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Docket No. R-1411

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Docket No. FR-5504-P-01

Elizabeth M. Murphy
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Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File Number S7-14-11

Re: Credit Risk Retention

To Whom It May Concern:

Quicken Loans Inc. (Quicken Loans) is pleased to submit its comments on the Office of the Comptroller of the Currency (OCC Docket Number OCC-2010-0002) , Board of Governors of the Federal Reserve System's (Board Docket Number R-1411), Federal Deposit Insurance Corporation's (FDIC RIN 3064-AD74), U.S. Securities and Exchange Commission's (Commission File Number S7-14-11), Federal Housing Finance Agency's (FHFA RIN number 2590-AA43), and Department of Housing and Urban Development's (HUD Docket No. FR-5504-P-01), interagency proposed rulemaking regarding credit risk retention. By way of background, Quicken Loans is an independent Detroit, Michigan-based conventional and FHA retail residential mortgage bank. We have been in business since 1985, and have approximately 4,000 employees. We do business in all 50 states and are one of the nation's five largest retail mortgage lenders, one of the three largest FHA mortgage lenders, and

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the largest online lender. We closed over $28 billion in retail mortgages, helping over 135,000 homeowners in 2010.

General Comments and Recommendations for Change

Quicken Loans supports the efforts the regulators have made to align the interests of mortgage originators, securitizers, investors, and consumers. Under Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the agencies were tasked with producing a rule to cover risk retention requirements, as well as define a qualified residential mortgage ("QRM") exemption. We share your goals, and we hope our suggestions will help create a strong rule that satisfies the original congressional intent.

We understand the immense task the joint-agencies were given in trying to craft a risk retention rule that satisfies the goals and beliefs of the six agencies involved. The initial proposal from the group is an ambitious plan with sweeping changes for consumers and the mortgage and housing market. Because this undertaking is so massive, it would be in everyone's best interest for the regulators to analyze the first round of comments, and then reissue another proposed rule incorporating such comments. The Dodd-Frank Act tasked the agencies with a wave of regulations that needed to be crafted within a very tight timeline. Though we all want to move beyond the financial crisis as quickly as possible, doing so with hurried solutions and expedited regulations without fully analyzing the potential consumer and economic impact is dangerous.

While we appreciate the tremendous undertaking from the agencies, we believe that the congressional intent of the original law has been overstepped by the regulators in crafting the proposed rule. By going beyond the original intent of the QRM exemption and the risk retention requirements, we believe and can demonstrate that a number of unintended consequences will occur for consumers, the government, and the housing market.

All of these important decisions are being made at a time when the housing market is on the brink of a double dip and sales are flat, at best. The loans being made today are the safest ever made with tighter standards across the board. These loans will have some of the lowest default rates of all time. However, to only cover under the umbrella of QRM a small number of currently originated loans that are clearly going to perform well is concerning. To restrict credit further across the board

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during a time when credit is already more difficult to obtain will only guarantee that the housing market will continue to stay at current levels, or even dip, for quite some time. As the administration, economists, and members of Congress have all noted, the economic recovery is highly connected to the housing market recovery. As written, the proposed rule compromises both.

The lack of risk retention did not cause the housing crisis. Poor underwriting guidelines caused the housing crisis. No one knows for sure exactly what the cost difference will be between a QRM and non-QRM loan. However, we are all in agreement that non-QRM loans will be more expensive for consumers. As currently written, the proposed rule could restrict credit to lower-income, minority, and first-time homebuyers (especially due to the points and fees test), and could potentially knock thousands of currently qualified consumers from the market, ensuring that the housing market remains stagnant for years to come. With the passage of Dodd-Frank, the regulators were given the mountainous task of writing a rule that will change the mortgage market for the foreseeable future. Doing so requires great attention to detail, consumer cost analysis and market dissection. With such a dramatic shift in underwriting standards from lenders and creditors over the past three years, and considering the quality of the loans being originated and successfully executed today, it makes little sense to potentially further restrain access to credit for consumers beyond the rules that exist today. Quicken Loans believes that solidly underwritten, safe, sustainable, fully-documented loans were the ones intended to be included in QRM by the drafters of the QRM amendment.

The rating agencies have been very clear: Whether a loan requires risk retention or not will have absolutely no bearing whatsoever on the way those rating agencies will view a loan. In other words, they give zero value to the concept of risk retention. They rate pools of loans, loan-by-loan, by assessing the underwriting risks on their own merits, not via imprecise lines in the sand that often designate high quality loans as not needing risk retention and provide some highly risky loans the cover of being referred to as a QRM. If the rating on loans is not changed because of a QRM, non-QRM, or the pending Qualified Mortgage ("QM") distinction, then creating solid products should be driven by underwriting and not risk retention.

We fully support the current exemption for the government sponsored enterprises ("GSE"s) and Ginnie Mae considering the fragile state of the housing market. The administration, economists, and members of Congress have said that their primary goal is to get the private market back into the

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industry. Accordingly, we must find a balance between private market capital and the stability of governmental agencies. If we hope to have an entry of private capital, Fannie and Freddie must slowly and carefully reduce their footprint. Moving quickly will hamper the already stagnant housing market and could lead to a further reduction in home values. A restrictive QRM, in concert with exempted agencies, effectively renders private options impotent. So while the GSE and Ginnie Mae exemption is the right solution for the current market, we do not need to increase the government footprint indirectly through an overly restrictive definition of a QRM.

Without knowing exactly what the final rules will be for either QRM or QM at this time, it is impossible to know the effects both will have on consumers and the market. We have strong concerns about the layered effect the QM, QRM, and risk retention rules will have on consumers, the housing market, and the industry as a whole. Therefore, we request that the regulators and the Consumer Financial Protection Bureau ("CFPB") make efforts to synchronize the rules instituted by both the QRM and QM definitions. We believe that this should include removing the DTI ratios, LTV restrictions, and servicing requirements from the QRM definition. As we stated previously and will detail further below, we believe that it was never intended by the drafters of the QRM amendment to include DTI, LTV, and servicing requirements within the QRM definition. To include this without knowing the true outcome of the QM definition could lead to layered problems for consumers. Therefore, we request that these two rules are aligned in a way that works best for consumers without impacting the housing market further.

Specific Concerns

The current QRM approach where each individual requirement acts as a trigger that disqualifies a consumer from a QRM loan is inconsistent with the congressional intent and goes against common sense underwriting and risk management. We understand that the framers of the rule wanted to create "bright line" standards to make the rule clear and easy to implement. However, the "one and done" approach whereby the loan is considered non-qualified, leads to far too many unintended false positives and false negatives. Good loans will require risk retention. Riskier loans will be considered qualified, and therefore won't require risk retention. Lenders consider all these

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triggers together as a whole, and often allow a higher-risk factor to be offset by one or more lower-risk factors.

The following chart from an analysis of our closed loan data over the past 24 months shows the tremendous affect the QRM has on loans when only one factor eliminates a consumer completely:

QRM Single Point of Failure

	A / B / C	D	E	F	G
		Loan Counts	% of Single-Reason Failures	% of All Failures	% of All Loans
1	**Loans that Fail Tests**				
2	**Loans That Fail for 1 Reason (**				
3	Refinance Loan with CLTV > 75%	14,402	31.9%	9.1%	8.4%
4	Is Cashout Refi with LTV > 70%	12,034	26.6%	7.6%	7.0%
5	DOES NOT have Written Appraisal	7,911	17.5%	5.0%	4.6%
6	Has Back End DTI > 36%	5,396	11.9%	3.4%	3.1%
7	Has Fees Exceeding 3% of Loan Amount	2,338	5.2%	1.5%	1.4%
8	Has Front End DTI > 28%	1,696	3.8%	1.1%	1.0%
9	Has Mortgage Assumption Provision	966	2.1%	0.6%	0.6%
10	Has any 60 day delinquency in previous 24 months (On any kind of credit)	383	0.8%	0.2%	0.2%
11	Purchase Loan with LTV > 80%	42	0.1%	0.0%	0.0%
12	Has Borrower Down Payment < 20%	38	0.1%	0.0%	0.0%
13	Has any bankruptcy/foreclosure/short sale in previous 36 months	1	0.0%	0.0%	0.0%
14	Is 2nd Lien on a Purchase Loan	0	0.0%	0.0%	0.0%
15	Has Prepayment Penalty	0	0.0%	0.0%	0.0%
16	Has Balloon	0	0.0%	0.0%	0.0%
17	Has Interest Only Period	0	0.0%	0.0%	0.0%
18	Is Bridge Loan	0	0.0%	0.0%	0.0%
19	Is Construction Loan	0	0.0%	0.0%	0.0%
20	Is Time Share	0	0.0%	0.0%	0.0%
21	Is NOT Owner Occupied	0	0.0%	0.0%	0.0%
22	Is NOT 1-4 Family	0	0.0%	0.0%	0.0%
23	Has Term > 30 Years	0	0.0%	0.0%	0.0%
	Has Term < 12 Months	0	0.0%	0.0%	0.0%
24	Has 60 day mortgage delinquency in previous 24 months	0	0.0%	0.0%	0.0%
25	**TOTAL Loans That Fail for 1 Reason**	**45,207**	**100.0%**	**28.6%**	**26.4%**
26	**Loans That Fail for More Than 1 Reason (Not Listed in Chart)**	**112,720**		**71.4%**	**65.8%**
27	**TOTAL Loans that Fail Tests**	**157,927**		**100.0%**	**92.2%**
28	**Loans that do not Fail**	**13,421**			**7.8%**
29	**All Conventional Loans Analyzed**	**171,348**			**100.0%**

As you can see in the chart above, an analysis of over 170,000 of our conventional loans over the past 24 months shows that **92% of loans fail at least one QRM test**. This is by far a more restrictive standard than the QRM authors sought. Just 8% of consumers would qualify for what we believe will be the more affordable QRM product. With consumers being eliminated from the QRM pool for just a single failed test through an already incredibly restrictive rule, it may become nearly impossible for many consumers to own their own home at an affordable price.

We have other concerns with this tripwire approach. For example, a consumer with a steady job, a large amount of cash in the bank, and a low DTI ratio would likely pose very little risk of default. By allowing a consumer like this to buy a home with a 10% down payment would likely create a mortgage with a very low risk of default. However, under the proposed rule, it would not qualify as a QRM. In order to qualify for a QRM, the consumer would have to make a 20% down payment. This may result in decreasing the availability of affordable credit without actually producing a safer mortgage. The proposed rule should let lenders allow the creditworthiness characteristics to work in concert to create sustainable and affordable mortgages for consumers. This way, a consumer who could not afford a large down payment could make up for it by having other safer and favorable ratings in other categories.

As an additional example, consider this chart:

	Consumer A Would not require risk retention	**Consumer B** Would require risk retention
LTV	80%	80%
DTI	20/36	33/33
Years at Current Job	2	20
Assets	$10,000	$100,000
Qualifies for QRM?	**YES**	**NO**

In this example, Consumer A and Consumer B are both looking for a loan. Consumer A is capable of placing the 20% down payment as defined by the proposed QRM definition, fits the DTI ratio requirement, but has been at their job for just two years and only has $10,000 worth of assets. Consumer A also has a mortgage payment that fits the front-end DTI requirement easily, but the consumer also has a tremendous amount of debt that nearly pushes them past the back-end DTI requirement. Despite this risk, Consumer A would qualify for the more affordable QRM loan while

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only having worked at a job for two years and having $10,000 in total assets. This is a far riskier loan for a lender as the consumer hasn't demonstrated a long work history, has a large amount of other debt, and does not have a substantial amount of capital to help cover any unforeseen circumstances.

Now, consider Consumer B. Consumer B is also capable of making the 20% down payment as defined by the proposed QRM definition. Consumer B has been at their current job for twenty years and has $100,000 in total assets. However, Consumer B has both a front-end and back-end DTI ratio of 33. Consumer B's only debt obligation is their mortgage payment. However, because of the higher DTI, Consumer B does not qualify for the more affordable QRM loan even though they have a steady income and employment, a hefty balance in the bank, and no other debt obligations. This would appear to be a much safer loan for the lender to make, but it isn't viewed as safer under the currently proposed QRM definition. Just because Consumer B does not meet one of the triggers in the proposed QRM definition should not mean that they are not overly qualified in other categories within the QRM.

With all this said, it is clear that one trigger does not determine whether a consumer is qualified for a loan or not. Certain factors can be negated by exceptional performance in other areas. We believe that lenders should be able to make a proper analysis based on a number of criteria in creating the safest products for their consumers without loans being eliminated from the QRM for just setting off one of the triggers.

We also have a number of other specific concerns with the proposed risk retention rule. They are listed below, and we go into them in more detail later in the letter:

1. **The proposed loan-to-value ("LTV") limitation**
2. **The proposed points and fees test**
3. **The proposed debt-to-income ("DTI") ratios**
4. **The proposed premium capture cash reserve account ("PCCRA")**
5. **The proposed servicing standards attached to QRM loans**

First, by including a down payment requirement of 20% in the proposed rule, a large number of qualified consumers will be forced to go with the more expensive non-QRM mortgage option. This

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down payment requirement was never intended to be included in the rulemaking as has been stated many times by the drafters of the QRM exemption amendment (please see our section on "Congressional Intent" later in the comment letter). While we understand that companies will still be able to make loans without a 20% down payment, requiring the lender to hold the five percent risk retention means that the loans will inevitably be more expensive than the loans without the five percent risk retention. Therefore, lower-income, minority, and first-time homebuyers will be either forced out of the private mortgage market entirely or forced to pay for the more expensive non-QRM loan. We request that the down payment requirement be removed from the QRM definition.

We will discuss this in further detail later in our comment letter.

Second, the amount of fees a consumer pays has no affect on loan performance. If the agencies choose to include this points and fees test, we suggest that the definition should match the final rule under the QM.

The three percent cap creates problems for consumers with lower loan amounts. An analysis of over 170,000 of our loans from the past 24 months reveals that more than 40% of loans fail to meet the QRM definition due to the points and fees test. For the same group of loans, 93% of loan amounts less than $100,000 fail to meet the QRM definition. And increasing the loan amount to $100,001 to $150,000 means 67% of loans still fail. Even by increasing the loan amount from 150,001 to $200,000, 35% of loans still fail. This is an unnecessary penalty on consumers with a lower income and in areas with lower housing prices.

As we previously stated, there is no evidence that the points and fees a consumer pays has any impact on loan performance and the rule as proposed would adversely target lower-income, minority, and first-time homebuyers.

We will discuss this in further detail later in our comment letter.

Third, we have strong concerns with the currently proposed DTI ratios. These DTI standards are too restrictive, and a DTI ratio itself does not determine loan performance. An analysis of over 170,000 of our loans from the past 24 months shows that greater than 53% of conventional purchase loans fail the back-end DTI test alone. Of the same loan group, greater than 25% of loans fail the front-end DTI test. This means that an enormous share of the market is immediately removed from

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the more affordable QRM product because of the DTI requirements alone. Layered on with the other requirements, it becomes nearly impossible for consumers to qualify for a QRM.

We will discuss this in further detail later in our comment letter.

Fourth, we have major concerns with the Premium Capture Cash Reserve Account ("PCCRA"). As proposed, the PCCRA requires securitizers to hold even more capital beyond the five percent risk retention. We believe that this will further hamper the goals of injecting private capital into the market. Additionally, this provision alone could add more than 200 basis points (or 40% more) of capital reserve required for non-QRM loans, essentially eliminating the private mortgage market all together. This could also eliminate a zero-point loan option for consumers. The capital restriction on premium priced loans may eliminate them from the market altogether, forcing the mortgage market to cover origination cost entirely through upfront fees charged to the consumer. Again, this will reduce mortgage affordability without any relationship to a consumer's qualifications. Any money above par in a securitization would essentially be eliminated if it was required to be held forever in an account. The PCCRA was placed into the rule to eliminate a perceived source of evasion of the risk retention requirements by the securitizer. As crafted, the rule is overly-inclusive and prevents transactions that would otherwise have meaningful risk retention and alignment of interests under the other proposals. We believe that this portion of the rule would create numerous challenges for originators and securitizers, increase the costs and lower the effectiveness of securitizations, and will result in consumers being punished by having to pay higher interest rates. The Dodd-Frank Act contained no mention of the PCCRA. At a bare minimum, we believe that a maximum of five percent of risk be held (including the PCCRA) and that the PCCRA definition be amended so that no more than five percent of the credit risk is actually retained by an originator or securitizer.

We will discuss this in further detail later in our comment letter.

Fifth, we believe that this proposed rule is not the vehicle to implement servicing standards. As written, only QRM loans would be subject to the servicing standards. We believe that there should be national servicing standards created for all loans and not just a specific set of the most pristine loans. Furthermore, we understand that there is already a joint-effort among regulators to create universal servicing standards, as well as settlements being drafted between the Department of

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Justice and state attorneys general, as well as numerous bills making their way through Congress, that will pave the way for servicing reform. Quicken Loans supports these efforts to establish a national servicing model, and we request that these steps be completed to create comprehensive servicing reform.

We will discuss this in further detail later in our comment letter.

Congressional Intent within Dodd-Frank for QRM

When the Senate and conference committees debated the risk retention portion of the Dodd-Frank Act, three bi-partisan members drafted the QRM amendment to single out quality mortgages that did not need to possess risk retention. Senators Kay Hagan, Johnny Isakson, and Mary Landrieu worked hard to propose a mortgage standard that would encourage lenders to execute sound underwriting leading to quality loans. However, the proposed QRM rule, mainly LTV, goes well beyond the congressional intent set forth by these members.

From the Dodd-Frank Act, it is clear that down payment was not intended to be included in the QRM definition. From Title IX, Subtitle D, Sec. 941(e)(4)(B), (emphasis ours):

> ''(B) QUALIFIED RESIDENTIAL MORTGAGE.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term 'qualified residential mortgage' for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—
> **''(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;**
> **''(ii) standards with respect to—**
> **''(I) the residual income of the mortgagor after all monthly obligations;**
> **''(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;**
> **''(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;**
> **''(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;**

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''(iv) mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and
''(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

On December 17, 2010, just a few days before Congress began the winter recess, Sen. Isakson stood before the Senate and discussed his hopes for the QRM rule and recited a number of things he wrote, along with his fellow members, to the regulators about their intent of the QRM rule. Isakson stated (emphasis ours):

> **It was our clear legislative intent that, underwriting and product features that data indicate a lower risk of default must be considered.** Prior to sponsoring the Amendment, we were provided with analyses of loan level data that demonstrated that loans that satisfy the elements set out in our Amendment default less frequently and cure more often than riskier loans. We understand that each of your agencies have been provided with this analysis, updated to reflect loan performance in 2010. **In particular this analysis demonstrates that historically tested standards, including full documentation of borrower income and assets, reasonable total debt-to-income ratios and restrictions on riskier loan features, such as negative amortization and balloon payments, significantly reduce the risk of default**.[1]

Then, in early 2011, when Sen. Isakson and others were learning what the proposed QRM rule may look like based on the administration's housing plans, Sen. Isakson wrote an editorial in The Hill's Congress Blog in which Sen. Isakson calls for the regulators to not penalize qualified homebuyers. Isakson wrote (emphasis ours):

> I am concerned, however, that regulators may propose an entirely unnecessary large down payment for consumers to meet the definition of a Qualified Residential Mortgage.
>
> This is not what we intended. We sought to curtail lax underwriting standards and risky products by lenders, not to penalize credit-worthy consumers seeking homeownership. **In fact, we debated and specifically rejected a minimum down payment standard for the Qualified Residential Mortgage.**

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[1] Senator Isakson (GA). "The Gold Standard Among Mortgages." *Congressional Record* (Dec. 17, 2010) p. S10422. Available from: Congressional Quarterly; Accessed 6/22/11.

> First-time home buyers make up 41 percent of the home-buying population and for many, saving for a down-payment is the largest barrier to buying a home. In 2010, the average market value of a first-time buyer's home was $184,091, according to the National Association of Home Builders. If the regulators require a 20 percent down-payment to be eligible for the Qualified Residential Mortgage exemption, for example, consumers would need to save a $36,818 down-payment in order to get the lower interest rates and consumer protections of a Qualified Residential Mortgage.
>
> For many potential homebuyers, this is simply out of reach. It is also unnecessary. **An analysis of loan performance over the past decade proves that low down payment homebuyers, when properly underwritten, have a relatively low risk of default when compared to the high-risk products and underwriting standards that led to the market meltdown.**
>
> Simply put, **a large down payment is not the most effective gauge of whether or not the borrower will pay their mortgage.** This is precisely why prudent underwriting was at the center of our amendment.[2]

Additionally, the three QRM amendment drafters wrote another editorial on Politico discussing the need for a responsible and broad definition to the QRM. They wrote (emphasis ours):

> More than a year ago, we worked together in a bipartisan effort to promote a sensible mortgage standard that would encourage sound underwriting and responsible lending. We introduced an amendment that exempted qualified residential mortgages from a requirement in the Dodd-Frank Wall Street Reform and Consumer Protection Act that would force originators to retain at least a 5 percent interest in loan pools, known as "risk retention," sold to investors.
>
> It passed with overwhelming support. **A rare coalition of consumer advocates and bankers embraced its objective: ensuring middle-class families can access sound, affordable mortgages.**
>
> But federal banking regulators last month proposed a 20 percent down payment requirement on QRMs. Regulators went for rigidity, rather than a balanced, flexible approach.
>
> **In contrast to our express intent - and despite repeated warnings from other members of Congress, consumer groups and bankers - regulators crafted a narrow**

[2] Isakson, Sen. Johnny. "Don't penalize qualified, responsible homebuyers." *The Hill's Congress Blog.* 12 Feb. 2011. *The Hill*. Web. 22 June 2011.

definition that could unnecessarily slow the housing market recovery, increase costs to otherwise qualified homebuyers and dampen incentives for sound underwriting.

The 20 percent down payment requirement leaves millions of qualified potential homeowners with two grim alternatives: pay higher rates upfront for a mortgage that falls outside the regulators' proposed QRM standard or delay homeownership for a decade or more to save for an onerous down payment.

It is precisely this extreme outcome that we sought to avoid when we crafted the QRM provision.

It would take almost nine years for the typical American family to save enough for even a 10 percent down payment, according to 2009 data from the Center for Responsible Lending, and 14 years to save for a 20 percent down payment.

This punitive timeline needlessly postpones homeownership for responsible American families and lengthens the duration of our nation's housing woes. Homeowners lacking the 20 percent down payment could be charged excessive mortgage interest rates - perhaps as much as 3 additional percentage points.

These steep rates could put homes out of reach for families and drag down the nation's housing recovery.

A broad risk retention requirement might well deter certain practices that contributed to the financial crisis. But it is important that regulators also consider the significant costs to aspiring homeowners.

Studies have shown that when the sound underwriting features we included are applied to loans, lower down payment requirements have a negligible impact on default rates. But a rigid 20 percent down payment requirement could prevent 17 percent to 28 percent of American borrowers from qualifying for a QRM.

We cannot price millions of middle-class American families out of the housing market for an arbitrary and inconsequential default rate decrease. It is time for the regulators to go back to the drafting table.[3]

Given the strong statements from the creators of the QRM amendment, we believe it is imperative that the regulators reconsider the proposed rule so that it coincides with the clear congressional intent of the Dodd-Frank Act. Imposing such a high down payment requirement, as well as a stringent DTI requirement, increases financing costs for many qualified consumers, thereby eliminating them

[3] Hagan, Sen. Kay; Isakson, Sen. Johnny; and Landrieu, Sen. Mary. "Home-buying rule would hit recovery." *POLITICO.* 12 May 2011. Web. 6 June 2011.

from the market. We believe that since the proposed rule was so far removed from the intent of the drafters, that a re-proposal of the rule would be appropriate before the agencies release a joint final rule.

Down Payment and DTI Effects

One of the most dangerous side-effects of the risk retention rule could be the market impact. The Obama administration, economists, and members of Congress have noted that housing will play a pivotal rule in any economic recovery. Pushing such a tight regulation at this time counteracts any efforts to restore a crippled economy and wounded housing industry. We believe that detailed and broad analysis must be done to ensure that the changes encompassed in the risk retention rule do not unjustly hinder the current recovery.

The current proposal states the regulators desire to limit the QRM loans to less than 50% of the market based upon 2009 loan data. This approach is already problematic as loans originated in 2009 were some of the first in a wave of highly-restrictive, well under-written loan products. Historically, from 1997 to 2009, only 19.8% of the GSE loans would have qualified for the QRM exemption.[4] This number is well below the intent of the legislation and also well below the 50% target threshold set by the regulators. Further, from the FHFA data, only 30.5% of loans originated in 2009 qualify for the QRM. Again, this is well below the goal of the legislation and the regulators.

[4] Source: FHFA. "Mortgage Market Note 11-02: Qualified Residential Mortgages." April 11, 2011.

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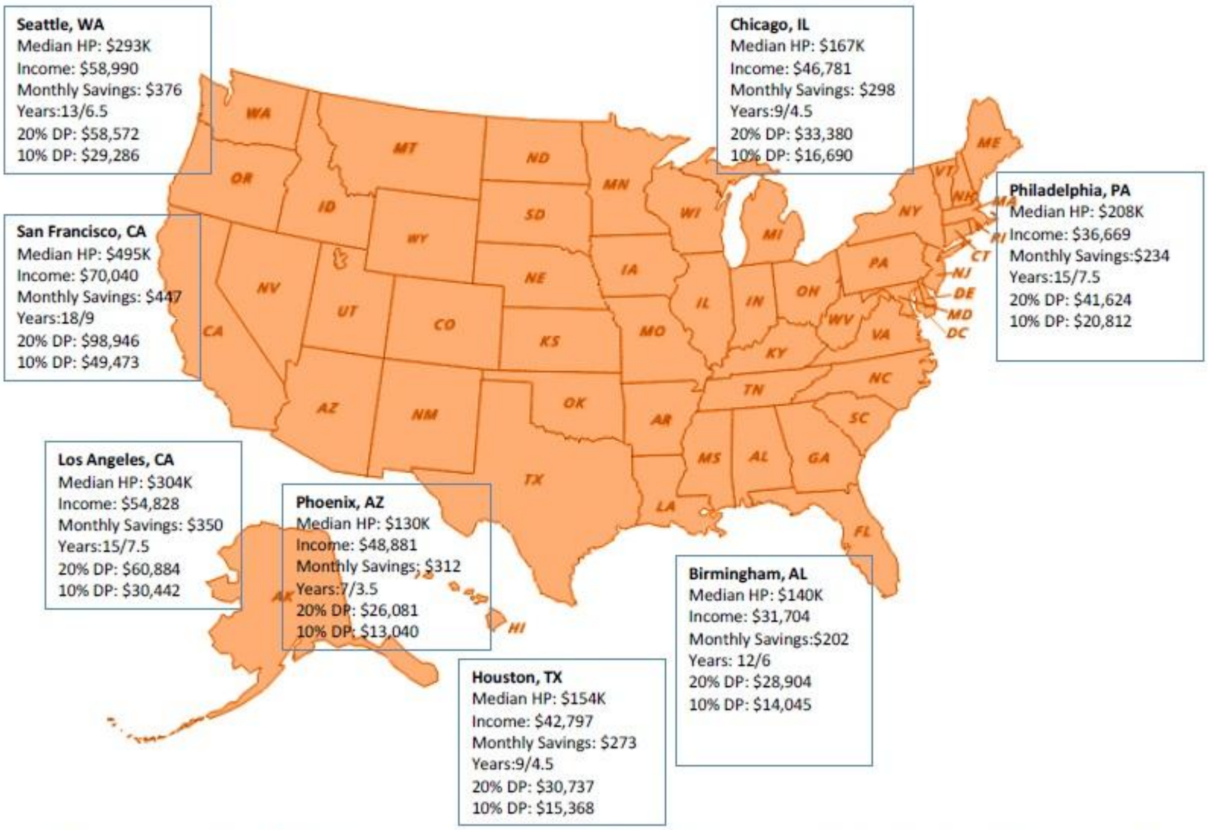
Additionally, the proposed 20% down payment requirement would require consumers from lower-income areas to save money for decades in order to afford a lower-priced, QRM mortgage, as demonstrated by the map below as provided by the Mortgage Bankers Association.[5]



"DP": Down Payment, "Median HP": Median Home Price, "Income":Median household income, "Years": Years to save for a 20% down payment /10% down payment on a median-priced home. Sources: NAR, Census Bureau, American Community Survey 5-year estimates, Federal Reserve, Consumer Expenditure Survey, American Housing Survey

Additionally, and even more troubling, is the direct impact on minority and lower-income first-time homebuyers. The table on the next page shows census data from 1989 through 2005. The table shows that minority and lower-income first-time homebuyers have relied heavily on low down payment loans in much greater frequency than other consumers[6]:

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[5] Source: Mortgage Bankers Association.

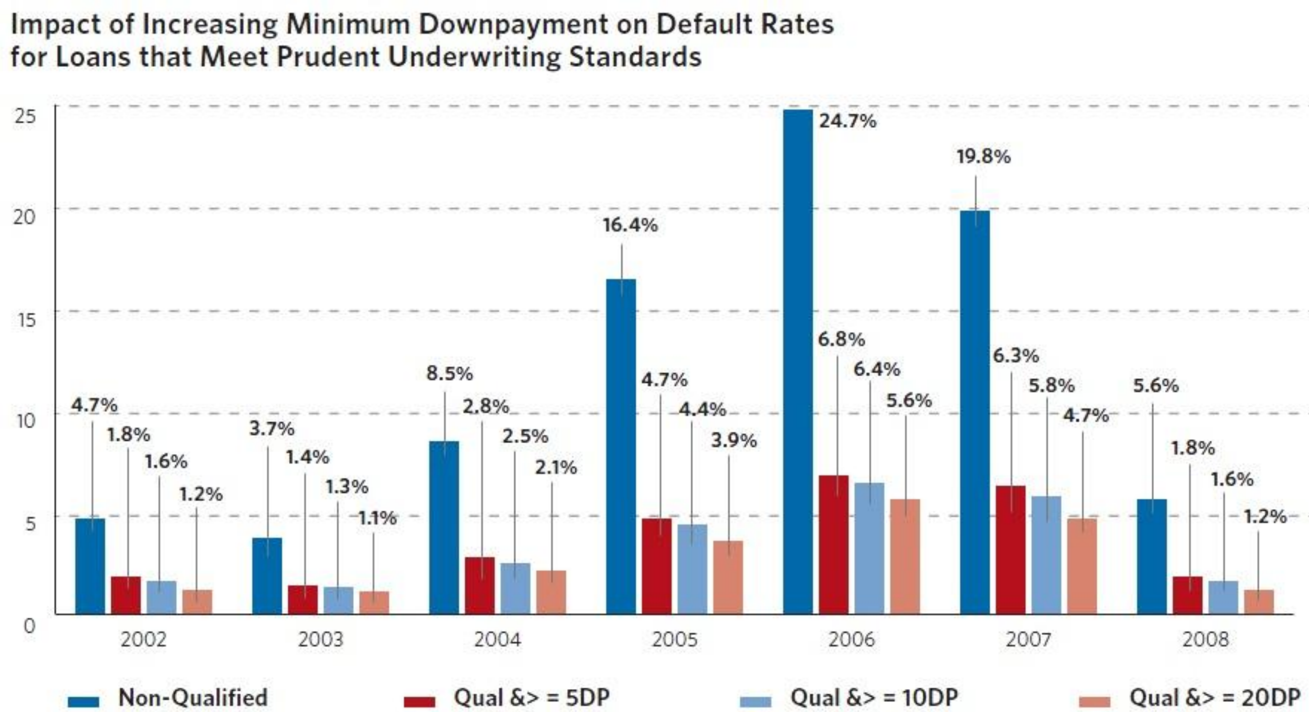
[6] Source: Mortgage Bankers Association from Belsky and Herbert, "Initial Housing Choices Made by Low-Income and Minority Homebuyers," *Cityscape*, 2008.

Trends in Loan-to-Value Ratio by Income and Race / Ethnicity for First-Time Homebuyers, 1989–2005

Income or Race / Ethnicity LTV Category	1989–2005 (%)	1989–1997 (%)	1997–2005 (%)	Change (%)
*Low-income buyers**				
80% or less	44.4	45.9	43.1	-2.8
80.1 to 90%	19.3	19.5	19.1	-0.4
90.1 to 95%	12.1	10.2	13.5	3.3
Above 95%	24.3	24.3	24.2	-0.1
Moderate-income buyers				
80% or less	41.9	43.4	40.4	-3.0
80.1 to 90%	22.4	24.2	20.8	-3.5
90.1 to 95%	14.4	14.1	14.7	0.6
Above 95%	21.3	18.3	24.1	5.9
High-income buyers				
80% or less	45.5	44.5	46.4	1.9
80.1 to 90%	26.0	28.6	23.9	-4.7
90.1 to 95%	13.2	14.0	12.4	-1.6
Above 95%	15.3	12.9	17.3	4.4
White buyers				
80% or less	44.4	45.1	43.0	-2.1
80.1 to 90%	23.7	25.0	22.2	-2.8
90.1 to 95%	13.0	12.7	13.4	0.7
Above 95%	19.0	17.2	21.4	4.2
African-American buyers				
80% or less	37.8	36.7	37.9	1.1
80.1 to 90%	19.9	20.1	20.4	0.3
90.1 to 95%	15.4	16.2	15.0	-1.2
Above 95%	26.8	27.0	26.7	-0.2
Hispanic buyers				
80% or less	40.5	42.1	41.0	-1.0
80.1 to 90%	20.4	23.8	18.6	-5.2
90.1 to 95%	14.9	11.6	15.3	3.7
Above 95%	24.2	22.5	25.0	2.5

Clearly, minority and lower-income consumers will be impacted greatly if the proposed rule becomes final. While we agree that prudent loans should be made, qualified consumers should not be eliminated from the opportunity to obtain a more affordable QRM by any single underwriting test such as a high minimum down payment.

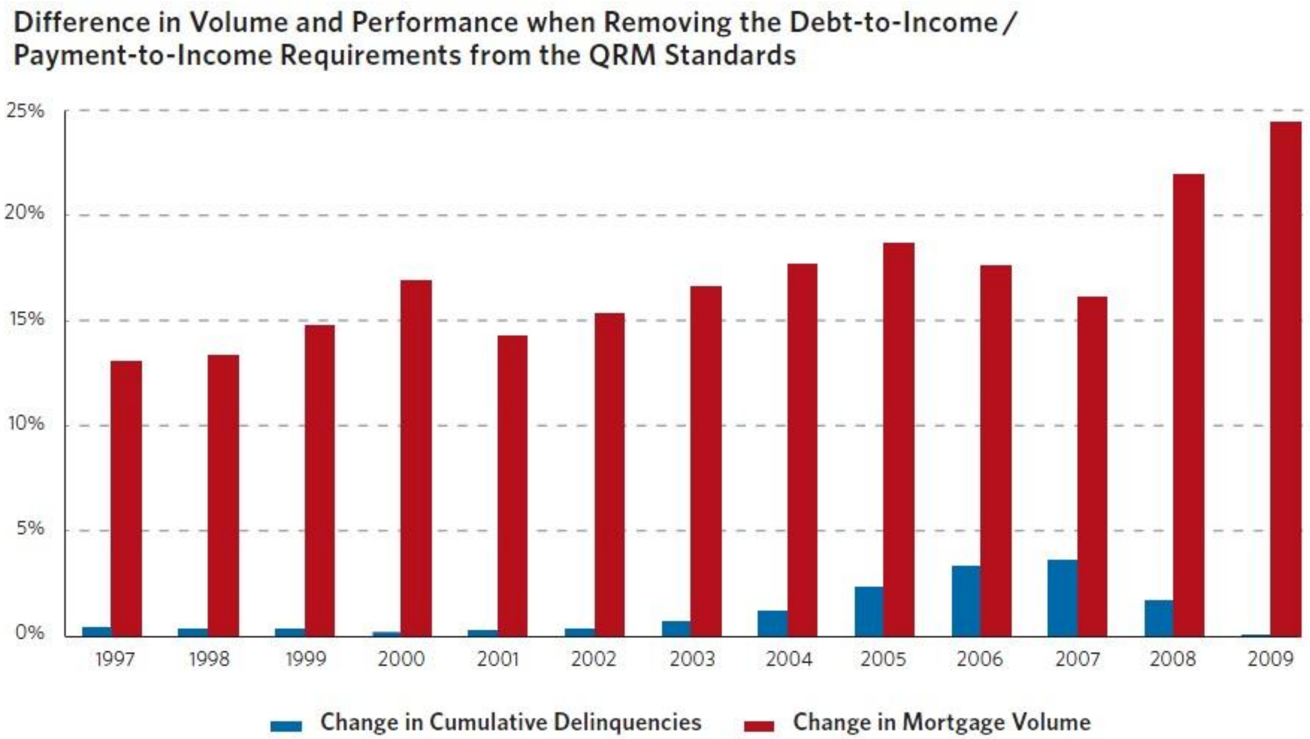
In terms of effect on the market, the QRM definition is designed to create safe loans that have a lower risk of default than other loans. However, despite the large down payment requirement, loans do not perform materially better because of it. Below, the table shows the minimal impact on default rates across by considering down payment for loans that otherwise meet prudent underwriting standards[7]:



Source: Vertical Capital Solutions of New York, an independent valuation and advisory firm conducted this analysis using loan performance data maintained by First American CoreLogic, Inc.

[7] Source: Mortgage Bankers Association.

In addition, the same holds true for DTI standards when a loan is carefully underwritten. The chart below from the FHFA shows that removing the DTI requirement from the QRM rule would cause a relatively small increase in delinquency, but add a large percent of consumers to the QRM population[8]:



Source: FHFA. "Mortgage Market Note 11-02: Qualified Residential Mortgages." April 11, 2011.

As shown above, by dropping the stringent DTI requirements, loan volume would increase substantially over the years while delinquencies do not rise significantly. Even within the crisis years where delinquency rose without the DTI requirement, the ratio was still very low. And when considering only the most prudent and safe loan years, we see that the DTI ratio was negligible in determining the security of a loan.

Points and Fees

We believe the three percent cap on all points and fees also unnecessarily eliminates qualified consumers from the more affordable QRM loans. As we have previously stated, we don't believe the

8 Source: Mortgage Bankers Association.

points and fees a consumer can pay directly relates to the safety and sustainability of a mortgage loan. Because of the adverse impact the points and fees test has, we request that the definition be changed to work in concert with the definition in the final QM rule.

The three percent cap on points and fees is particularly biased against lower-income consumers who tend to purchase lower cost homes. Additionally, consumers obtaining a lower mortgage amount are also unfairly treated under the points and fees cap. An analysis of over 170,000 of our loans from the past 24 months reveals that more than 40% of loans fail to meet the QRM definition due to the points and fees test. This is a staggering number. For the same group of loans, 93% of loan amounts less than $100,000 fail to meet the QRM definition. Increasing the loan amount to $100,001 to $150,000 doesn’t help things either, as 67% of loans still fail. And even by increasing the loan amount from 150,001 to $200,000, 35% of loans still fail. This is an unnecessary penalty on consumers with a lower income and in areas with lower housing prices.

As a result of the disparate impact, we propose that the QRM definition for points and fees be changed to be in line with our proposed definition for the QM. This includes the elimination of loan officer compensation, the elimination of affiliate fees, the elimination of a cap on bona fide discount points that a consumer can pay, and increasing the definition of low loan amounts to be set at $150,000.

Premium Capture Cash Reserve Account (PCCRA)

As written in the proposed rule, the premium capture cash reserve account (“PCCRA”) provisions would require that in addition to the amount of credit risk a sponsor is required to retain, a sponsor must establish a PCCRA in an amount equal to any amount that the gross proceeds, net of closing costs paid by the sponsor(s) or issuing entity to unaffiliated parties, received from the sale of the mortgage-backed security interests to persons other than the retaining sponsor exceed 95 percent of the par value of all MBS interests in the issuing entity issued as part of the securitization transaction or 100 percent of the par value of all MBS interests in the issuing entity issued as part of the securitization transaction.

The PCCRA would be subordinated to all other interests in the securitization, could only be invested in a limited number of investments, and would have to remain for the entire term of the transaction unless used to satisfy losses.

As the agencies have noted within the proposed rule, the PCCRA was added to minimize the possibility that a sponsor could reduce their five percent risk retention requirement by the amount of premium collected upon MBS sale. However, the PCCRA mechanism goes beyond the congressional intent of the Dodd-Frank Act. By including the proposed PCCRA, the rule fails to acknowledge that there are costs involved in originating mortgage loans. Eliminating premium priced loans through a PCCRA mechanism shifts the cost recovery burden entirely to the consumer and away from the secondary market, ultimately reducing credit availability and optionality for consumers. The rule would force lenders to charge up-front points and fees to cover origination expenses as opposed to the currently available option of using higher rates to generate premium pricing upon sale to the secondary market.

We fear that the unintended consequences of the PCCRA will be substantial. The rules will have an adverse impact on the private MBS market and would slow its re-emergence as an alternative to government guaranteed mortgages. Further, we believe that the PCCRA may diminish the consumer's ability to "lock in" their interest rate well in advance of closing. Lastly, PCCRA will make buying a home even more difficult, particularly for lower income consumers, by layering the entire origination cost burden onto them in addition to the large down payment already required in the proposed rule.

As a bit of background, lenders set the mortgage interest rate consumers pay relative to the costs of the origination plus the minimum return on their investment. These origination costs include salaries, overhead, audit and compliance, and other expenses. A lender's cost basis in a loan when it is originated is almost always above the par price, even if a point or two is collected up front. By definition the costs to create a loan are an investment of a lender's capital that is "at risk" should the loan default and thus should be considered as part of the risk retention calculation as opposed to the PCCRA which assumes origination costs don't exist. Since lenders cannot be expected to originate every loan at a loss, any viable sale execution ought to permit the lender to recover their cost basis through premium sales proceeds.

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Before a lender decides and locks its offering rate, the lender must first determine both its basis in a loan and the most effective and efficient execution for the loan. Usually, there are only two execution options for a loan: selling the loan or keeping the loan in portfolio. If a lender has a sizeable balance sheet, the lender will weigh the return it gets by holding the loan against competing executions. If a lender decides to sell a loan, it will sell the loan into a private label securitization, sell the loan as a whole loan, or sell the loan to the GSEs or the federal government. In a normal market, an originator can estimate the price as related to the sale of the mortgage loan with a given rate into each of these executions.

When a lender looks at its options for each loan, the sales options are in competition for the best return. As the costs of the sales options rise, the value of each option will fall. As a result, the lender will be less likely to price to the given sales option and the consumer will then have a higher par rate. As we know, consumers use rate as one of the main comparison factors in getting a loan and lenders compete to offer the best rate. However, all three options will not be available if the prices are not competitive with the other two options.

To determine an offering rate, a lender estimates its basis in the loan along with its return on investment that is needed, and then the lender offers the note rate that corresponds with the par rate. Par rate, though, is often used in the mortgage industry as another way to describe the premium dollar price. Par rate refers to the interest rate a consumer receives if they do not pay any points to reduce their overall interest rate. This should not be confused with the price of a loan that trades in the secondary market. It is also common for a consumer to buy up (take more cash at the closing to help for closing costs) or buy down (pay the lender more money at closing in exchange for a lower interest rate). Consumers will also receive different par rates due to credit characteristics which can then translate into higher or lower prices at the time of the sale.

The private MBS sales option will not be competitive with other funding sources if the PCCRA is included in the final risk retention rule. The rule, as written, would require the sponsor to subordinate costs associated with the overhead and return on capital, thus reducing the value of the returns. This means that the private label option will become less competitive and will require that the par rate rise to cancel out the costs (included in the costs is the low rate of return on essentially “dead capital” in the PCCRA account) of the PCCRA. Clearly, this means that the cost of a mortgage for a consumer would also rise.

One solution to the problem would be to increase the par rate through payment of points at the time of origination. However, the pending QM rule explicitly restricts the number of points that can be used to buy down a loan and the proposed QRM rule allows for zero points in the three percent calculation. With these two things combined, the private label security will never be able to be a viable option compared to the other funding mechanisms.

We believe the PCCRA also compromises the fundamental aspects of the private RMBS securitization market that makes them efficient and competitive sources of funding. Private MBS securitizations are structured as issuances of securities that are bankruptcy-remote from the seller, which allows the securities to receive a higher credit rating than that of the corporate debt obligations of the seller. We believe that the proposed rule would cause the amount retained by the PCCRA in private MBS securitization to be a large sum of capital because it will be in the first loss position. We also believe that the PCCRA plus the five percent risk retention combined will mean that private MBS securitizations will be prevented from receiving accounting sale treatment. This will reduce or eliminate all incentive to securitize for institutions other than those that desire to account for securitizations as financings. Institutions that use other sources of funding will move away from this type of securitization altogether, thus constricting the market even further and reducing the availability of credit and access to capital.

Since interest rates change the par rate on a daily basis, originators will typically hedge the rate they offer the consumer by selling an equivalent note rate forward. By doing this, originators allow consumers to lock their rate despite market fluctuation. We believe the rule would change the way an originator can use interest rate hedges between the initial origination and the point of securitization. This would likely prevent an originator from offering any consumer a rate lock in the future. For example, say a lender provides a rate lock and then hedges to protect its own exposure in a rate movement. If the value of the loan goes down, the value of the hedge will go up, and if the value of the loan goes up, the value of the hedge will go down. If the increase in the value of the loan is then treated as a premium and is required to be captured, the lender will then not be able to receive the capital it needs to offset the loss on the hedge. This means the PCCRA will not only have

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negated the benefits of the hedge, but will have arguably made it completely unprofitable, thus severely constricting rate lock availability.

Quicken Loans believes that reasonable restrictions that are constructed to prevent transaction structures that artificially reduce the allocation of credit losses paid to interests retained by sponsors could be an appropriate option. However, we do not believe that the PCCRA meets these views. Therefore, we request that these portions be withdrawn. Alternatively, we suggest that the proposed PCCRA provisions be revised by excluding from the proposed PCCRA provisions any transactions in which the retained risk constitutes a proportionate interest in the securitized assets. Therefore, we request an exclusion for risk retention that is constructed in the form of a percentage interest in each security class (such as the vertical slice that is given as an option in the rule) or ownership of a representative sample of similar assets because it is impossible to construct a transaction that would artificially reduce credit losses allocable to these forms of risk retention. Quicken Loans believes that these changes will allow the private MBS securitization to become an economically viable funding source for loans that are subject to risk retention while also ensuring that the residual interest retained by the sponsor are in concordance with the risk retention obligations.

The intent of PCCRA is to prevent an issuer from issuing bonds at such a premium that all or some of the five percent risk retention is offset. The concern that we've mentioned is that much of a security's premium over par represents real costs to the issuer—costs that need to be offset to prevent the origination/securitization process from being a harsh cash draining event.

A potential resolution to this could be to take into account in the PCCRA calculation that there are real costs involved in the securitization and origination process. If the issuance price were to be reduced by reasonable origination and securitization costs, reasonable profit figure, and hedging costs, one could conclude that if any amount remains above par, that could be captured as discussed in the PCCRA proposal.

Servicing Standards

Quicken Loans is deeply concerned about the inclusion of servicing standards within the QRM definition in the risk retention rule. It is clear within Dodd-Frank that the QRM definition was solely meant to cover loan originations standards. There is no evidence in the legislative content or in the

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forming of the legislation that Congress intended to include servicing standards as part of the risk retention mandate.

One issue we have with the inclusion of servicing standards is the way these servicing standards would regulate mainly the highest quality consumers who will likely not encounter servicing issues while the rest of the market, including consumers who have a higher risk of default, would be left unregulated.

Quicken Loans supports a national mortgage servicing standard. We believe that these standards may help the housing market and create certainty for the market going forward. However, with an already cumbersome rule with multiple layers affecting the housing market at the same time, it would be irresponsible to include another layer into the mix without the Congressional mandate. Quicken Loans believes that the effort to create the uniform servicing standards should be left to the federal regulatory effort that is ongoing and one that will cover all residential mortgage consumers, not just those who obtain a QRM.

With the proposed rule, lenders are required to provide loan documents that include policies that would require commencement of loss mitigation efforts after 90 days of delinquency, would allow for loan modifications if the resulting net present value would be greater than foreclosure proceeds, would address how the lender would service any second lien loan on the same property, and, lastly, would include servicing compensation arrangements that are consistent with the creditor's commitment to engage in loss mitigation services. There is also written into the rule that there must be an effort made not to shift the servicing responsibility over to another company that does not follow the same policies and practices. As we stated previously, we strongly support a system that would work to address many of the above issues. However, we believe that the agencies involved in the risk retention rule should honor the efforts already being made by the regulators in developing comprehensive servicing reform across the entire industry. By releasing portions of the servicing reform plans in divided sections, many unintended consequences could arise from taking a piecemeal approach to servicing standards.

Another curious choice from the regulators is the inclusion of the servicing standards within loan documentation. By including such complicated language in loan documentation, a consumer could be easily confused or scared away from closing a loan. We see no reason to disclose to a

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consumer these practices if a lender is already legally required to abide by them. It has been the goal of the newly created CFPB that they hope to simplify the mortgage disclosure process. Steps like added disclosures about servicing only complicate this issue further. Additionally, if regulators choose to reform servicing standards in addition to the rules within the QRM definition, the new conditions would either not apply to existing loans or new documentation would have to be provided to current consumers to account for the changes. These changes are difficult, time-consuming, and confusing for a consumer and would place a tremendous burden on lenders to inform and gain consent of all current consumers to amend their current loan documents.

We also have concerns that with the added language about servicing standards within loan documentation, consumers could mount a defense of foreclosure claim that the servicer's policies did not meet regulatory requirements or the servicer did not comply with the rules required to service the loan. We believe it is irresponsible policy to provide a consumer with a private right of action to enforce these regulatory statutes. Other government loan modification programs, including the Home Affordable Modification Program ("HAMP"), were not constructed with the private right of action included. We believe that any servicing changes should be a matter of regulatory compliance only and should be consistent with current government servicing standards for their programs.

We also believe that by attaching these new servicing standards to only QRM loans, Quicken Loans believes that this will actually make non-QRM loans safer than QRM loans in the eyes of an investor. This goes directly against what Dodd-Frank intended. If one judge ruled that the foreclosure action was not in line with the servicing procedures laid out by the servicing rules attached to the QRM definition, all of the loans serviced by that servicer would potentially lead to losses to investors.

Lastly, we have concerns about some of the specific servicing standards. For some companies, it can be burdensome to commence loss mitigation immediately after 90 days. The second lien portions in the rule are also unclear and do not account for many of the problems that occur with first and second liens that are covered by a different servicer.

Due to the aforementioned concerns, we do not believe that the mortgage servicing standards have the flexibility to evolve and change appropriately between QRM and non-QRM loans. Therefore, we ask that the interagency rule-makers forgo including servicing standards within the risk retention rule and allow the federal regulatory agencies solely investigating and researching new servicing standards to complete this work.

Impact on Government

One of the greatest debates about housing policy reform has focused on the role of the government versus the role of the private market. As the risk retention rule has been written, we believe that the government's role in housing and housing finance will not only remain the dominant force of capital and credit access, but will also grow as an indirect result of the rule. The area of great concern is the effect on FHA. The rule as currently proposed, any consumer who cannot afford the 20% down payment, the strict DTI ratio, or the higher monthly payments that will result from the higher risks involved in a non-QRM loan will be shuffled over to FHA because of the for the more relaxed down payment and DTI requirements. If the administration truly wants to shrink the FHA footprint, reduce the portfolios, and still give lower-income consumers access to housing without relying so heavily on the government for support, the risk retention and QRM rule must be drastically revised.

Additionally, we have many concerns with the way Fannie Mae and Freddie Mac are being handled with regards to risk retention. As the rule is written, both GSEs have been given an exemption from the risk retention rule because the government already backs their securities, and therefore, they do not need to hold any additional amount of capital as incentive to securitize quality loans. Today's mortgage market is functioning because of the existence of FHA and VA, and in particular, because of Fannie Mae and Freddie Mac. This position is neither sustainable nor desirable. With Fannie and Freddie providing the credit for the vast majority of consumers, private capital is on the sidelines. With the proposed QRM definition, this problem is only exacerbated. If the proposed rule becomes final, the GSEs impact in the housing market will surely grow as lenders will seek to securitize their loans the cheapest way possible. This cheap route will clearly be through the government-sponsored entities.

We agree that the GSE exemption is appropriate at this time. As we have stated previously, stability in the housing market is one of our primary goals. The GSEs continue to play an important role in the stabilization of the market, and will (and should) play a prominent role in the future. But

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we still need a robust private market to complement the role of the agencies, and as we start to take steps toward changing the make-up of Fannie and Freddie, we must consider the affects the risk retention and QRM rule will have on them.

Conclusion

Without substantial revisions to the proposed risk retention and QRM rule, Quicken Loans believes that we will see a significant impact on credit availability and affordability for first-time, minority, and lower- and moderate-income homeowners as well in the market place as a whole. We fully support safe and sustainable mortgage standards through the statutory QRM exemption, and it would be in everyone's best interest for the regulators to analyze the first round of comments, and then reissue another proposed rule incorporating these comments.

We thank you for this opportunity in allowing us to comment. Should you have any further questions, please feel free to contact Shawn Krause at (313) 373-7773 or at ShawnKrause@quickenloans.com.

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