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October 29, 2013

Legislative and Regulatory
Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E–218, Mail Stop 9W–11
Washington, DC 20219

Robert deV. Frierson
Secretary
Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410

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

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590–AA43
Federal Housing Finance Agency
Constitution Center, (OGC) 8th Floor
400 7th Street, SW
Washington, DC 20024

RE: Joint Proposed Rule on Credit Risk Retention: OCC RIN 1557-AD40, Docket ID OCC-2013-0010; FRB RIN 7100-AD70, Docket No. R-1411; FDIC RIN 3064-AD74; SEC RIN 3235-AK96, File No. S7-14-11; FHFA RIN 2590-AA43; HUD RIN 2501-AD53, Docket ID HUD-2013-0090

Dear Madam and Sirs:

VantageScore Solutions LLC ("VantageScore") thanks the Federal Housing Finance Agency, the Federal Reserve Board, the Department of Housing and Urban Development, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission for this opportunity to comment on the proposed Credit Risk Retention rule that was published in the *Federal Register* on September 20, 2013. VantageScore submits this comment letter specifically in response to Question 89 (parts a–c), which asks "is the agencies' approach to considering the QRM definition … appropriate? Why or why not? What other factors or circumstances should the agencies take into consideration in defining QRM?"[1]

VantageScore Solutions is an LLC formed in 2006 by the three national credit reporting companies or "CRCs" (Equifax, Experian, and TransUnion) in order to provide choice and competition in the consumer credit score marketplace and do this while providing a highly predictive credit score based on the latest analytic methodologies.

Since its introduction in 2006 VantageScore has experienced significant market acceptance and today is used by 7 of the top 10 financial institutions, 8 of the top 10 credit card issuers and by 6 of the top 10 auto lenders. Of particular relevance to this comment letter, VantageScore is also used by each of the top 5 mortgage lenders, although typically not for underwriting loans at origination since Fannie Mae's *Single Family Selling Guide* and Freddie Mac's *Single-Family Seller/Servicer Guide* require that originators underwrite single-family mortgage loans using pre-recession, 2004 FICO score models if they want those loans to be eligible for purchase by either of the GSEs[2] – despite the fact that VantageScore scores 30 – 35 million more consumers than other models and reaches more than 10 million previously unscoreable consumers with good credit quality.

It is noteworthy that when the regulators charged with promulgating the Credit Risk Retention rule published the initial Notice of Proposed Rulemaking ("NPR") on the April 29, 2011, they wrote:

> "… ***The Agencies do not propose to use a credit score threshold as part of the QRM definition*** because such a standard would require reliance on credit scoring models developed and maintained by privately owned entities and ***such models may change materially at the discretion of such entities***. There also may be inconsistencies across the various credit scoring models used by consumer reporting agencies, as well as among different scoring models used by a single provider. Consequently, in order to ensure that creditors continue to choose among different credit score providers, the Agencies would have to determine a cutoff score under multiple scoring models and periodically revise the regulation in response to new scoring models that might arise."[3]

In a similar vein, the current Notice of Proposed Rulemaking that was published on August 28, 2013, continues to eschew reliance on a specific proprietary credit scoring model developed and maintained by a privately owned entity. It reads in part:

> "… the agencies do not believe it is appropriate to establish regulatory requirements that use a ***specific credit scoring product*** from a private company, especially one not subject to any government oversight or investor review of its scoring

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[1] 78 FR 183, September 20, 2013 at 57,991, col. 2.

[2] Fannie Mae's *Single Family Selling Guide*: https://www.fanniemae.com/content/guide/sel092413.pdf; Freddie Mac's *Single-Family Seller/Servicer Guide, Volume 1*: http://www.freddiemac.com/sell/guide/.

[3] 76 FR 83, April 29, 2011 at 24,121, col. 3; emphasis added.

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model. The agencies believe that the risk to investors of trusting in such proprietary systems and models weighs against this alternative, and does not provide the transparency of the bright line underwriting standards proposed by the agencies."[4]

In fact, whether the issue is credit risk retention related to mortgage loans or qualifying automobile loans ("QALs"), the NPR consistently and unambiguously makes the point that neither credit scores nor a single proprietary brand of credit scoring model should serve as either a threshold or as a standard. The point is emphasized repeatedly and is reflected in the following excerpts from the NPR:

- "Moreover, securitizers from the automobile sector explicitly disavowed any interest in using any underwriting-based exemptive approach unless the agencies incorporated the industry's current model, which relies almost exclusively on matrices of credit scores (like FICO) and LTV. As is discussed in the agencies' original proposal, ***the agencies are not persuaded that it would be appropriate for the underwriting-based exemptions under the rule to incorporate a credit score metric***."[5]

- "Although the agencies have taken into consideration the comments that these standards do not reflect current underwriting practices, ***the agencies generally do not believe it would be appropriate to include a standard based on FICO scores in the QAL underwriting standards.***"[6]

- "... ***the agencies also observe that they generally do not believe it would be appropriate to include a standard based on FICO scores*** in the QAL underwriting standards, because it would tie a regulatory requirement to third party, private industry models."[7]

Yet despite the unambiguous statements made repeatedly in the NPR that the regulators do not believe it is appropriate to establish regulatory requirements that use a specific credit scoring product, that would be the result if, absent other actions within the control of the Federal Housing Finance Agency as conservator and regulator of the GSEs, the regulators follow through on their proposal to "align" QRM with QM[8] and have the definition of a Qualified Residential Mortgage ("QRM") mirror the definition of a Qualified Mortgage ("QM"). Why? Because one way to qualify for designation as a Qualified Mortgage under the Ability-to-Repay and Qualified Mortgage Standards rule is for the loan in question to "be eligible for purchase or guarantee by Fannie Mae or Freddie Mac"[9] and both Fannie Mae in its *Single Family Selling Guide* and

[4] 78 FR 183, September 20, 2013 at 57,985, col. 2; emphasis added.
[5] Ibid. at 57,979, col. 3; emphasis added.
[6] Ibid. at 57,984, col. 1; emphasis added.
[7] Ibid. at 57,984, col. 2; emphasis added.
[8] Ibid. at 57,995, col. 1.
[9] 78 FR 20, January 30, 2013 at 6,535, col. 2.

Freddie Mac in its *Single-Family Seller/Servicer Guide* require that loans be underwritten using a pre-recession, 2004 FICO credit score.[10]

In the absence of simple remedial action by the Federal Housing Finance Agency prior to the January 10, 2014 effective date of the CFPB's Ability-to-Repay and Qualified Mortgage Standards rule, adoption of the proposed Credit Risk Retention rule with its definition equating QRM with the CFPB's definition of QM, the regulators would, in fact, be doing indirectly exactly what they said they do not believe to be appropriate: establishing regulatory requirements that use a specific credit scoring product.

The solution is simple and does not require any change in the proposed policy to align the definition of QRM with the definition of QM. All that is required is for the Federal Housing Finance Agency, as conservator of Fannie Mae and Freddie Mac, to direct each of them to accept loans underwritten using other validated credit scoring models in addition to the FICO models and to revise their seller/servicer guides to reflect this change in policy and practice. FHFA's authority to make such a directive is clear:

> "Because FHFA's mission is to promote housing and a strong national housing finance system by ensuring the safety and soundness of the Enterprises and the Banks, HERA amended the *Safety and Soundness Act* to make explicit FHFA's general regulatory and supervisory authority. To this end, section 1311(b)(1) of the *Safety and Soundness Act* expressly makes each regulated entity "subject to the supervision and regulation of the Agency," thus amplifying the broad supervisory authority of the Director. See 12 U.S.C. 4511(b)(1). Moreover, the *Safety and Soundness Act* underscores the breadth of this authority by expressly conveying "general regulatory authority" over the regulated entities to the Director ... The Enterprises are currently in conservatorship. ***FHFA as Conservator has been responsible for the conduct and administration of all aspects of the operations, business, and affairs of both Enterprises*** since September 6, 2008, the date on which the Director placed Fannie Mae and Freddie Mac in conservatorship. ***As Conservator, FHFA is authorized to take such action as may be "necessary to put the regulated entity in a sound and solvent condition" and "appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity."***[11]

On March 19, 2013, FHFA's Acting Director DeMarco testified before the House Financial Services Committee at a hearing entitled "Sustainable Housing Finance: An Update from the Federal Housing Finance Agency on the GSE Conservatorships." During that hearing an exchange took place between a member of the Committee, Rep. Bill Huizenga (R-MI), and FHFA Acting Director Ed DeMarco during which the Congressman challenged the wisdom of having a single source serve as a sole provider for services required by the GSEs. While the subject was not credit scores but lender placed insurance, the parallels are clear:

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[10] Fannie Mae's *Single Family Selling Guide*: https://www.fanniemae.com/content/guide/sel092413.pdf; Freddie Mac's *Single-Family Seller/Servicer Guide, Volume 1*: http://www.freddiemac.com/sell/guide/.
[11] 76 FR 118, June 20, 2011 at 35,724 – 35,725.

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Rep. Huizenga: "… I want to talk a little bit about lender-placed insurance ("LPI"). I don't think that is something that has come up, kind of a technical, 'in the weeds' thing, but I know there had been a push by Fannie Mae looking at trying to basically come up with one lender, one underwriter, one agent group. I believe you had put the brakes on that operation or on the movement towards that. Do you see any value in selecting these preferred vendors versus having a free market system do that?"

Mr. DeMarco: "Congressman, I have concerns about the way the lender-placed insurance market has worked. I think a lot of people do. What I am seeking, and we actually made it part of the scorecard for 2013, is ***I am seeking to work with other regulators and with other market participants to come up with a market standard for how to improve the transparency and the competition in this marketplace*** so that both borrowers and investors are better protected. So what I am looking for is not a Fannie Mae-centric approach or conclusion here. I certainly want to help Fannie Mae. As conservator, I want to see them in a better position with regard to LPI. But I think we can do better than that, ***I think we can do something to create a better standard for the market so whether the borrower's mortgage is owned by Fannie Mae, Freddie Mac, or some other market participant, if we can bring something better to the way this market works, that's what I'm aiming [for]*** …"[12]

Looking at the clear parallel that can be drawn between the proposed sole-sourcing of lender-placed insurance at the GSEs and the actual sole-sourcing of credit score models by the GSEs, Acting Director DeMarco's response to Congressman Huizenga would suggest that it is in the context of the current rulemaking that FHFA can "work with other regulators and with other market participants" to improve competition in the credit scoring marketplace with the end result being a win for all:

- Lenders would win in that they could choose the scoring model they deem most predictive and best suited to meeting their needs toward providing quality loans while reducing re-purchase risk;
- Consumers would win since millions of more qualified, creditworthy consumers would have access to mainstream mortgage credit;
- The GSEs would win since a competitive credit scoring marketplace would incentivize all market participants to constantly search for ways to improve the accuracy and predictiveness of their scoring products;
- Investors would win since there would be a reduced risk of default in the underlying mortgages in securitized packages; and,
- American taxpayers would win since increased homeownership stabilizes families, strengthens communities and brings significant positive benefit to the economy.

[12] Hearing entitled "Sustainable Housing Finance: An Update from the Federal Housing Finance Agency on the GSE Conservatorships" held before the Committee on Financial Services, U.S. House of Representatives, March 19, 2013, Serial No. 113-8 at page 48; an archived video of the hearing (last viewed October 22, 2013) is available at http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=323597; the exchange referenced above can be found 2 hours and 29 minutes into the hearing.

There is a clear urgency regarding this concern, since the CFPB's Ability-to-Repay and Qualified Mortgage Standards rule is scheduled to go into effect in less than three months, on January 10, 2014, and FHFA has announced that: "... it is directing Fannie Mae and Freddie Mac to limit their future mortgage acquisitions to loans that meet the requirements for a qualified mortgage..." and "Fannie Mae and Freddie Mac will continue to purchase loans that meet the underwriting and delivery eligibility requirements stated in their respective selling guides"[13] – both of which state unequivocally that when the term "credit score" is used it is referring exclusively to FICO scores.

Fannie Mae's *Single Family Selling Guide* defines the term "credit score" as:

> "A numerical value that ranks an individual according to his or her credit risk at a given point in time, as derived from a statistical evaluation of information in the individual's credit file that has been proven to be predictive of loan performance. When this term is used by Fannie Mae, it is referring to the classic FICO score developed by Fair Isaac Corporation."[14]

Similarly, Freddie Mac's *Single-Family Seller/Servicer Guide* strikes a similar note:

> "Freddie Mac requires the Seller to use a FICO score, a Credit Score developed by Fair Isaac Corporation (FICO™) whenever a usable Credit Score is required."[15]

Question 89 asks if the agencies' approach to considering the QRM definition is appropriate and whether other factors or circumstances should be taken into consideration in defining QRM. We believe that at the time the CFPB made the decision allowing a loan to meet the test of being a Qualified Mortgage via its "eligibility for purchase" by Fannie Mae and Freddie Mac, they did so without realizing that the GSEs' seller-servicer guides they were incorporating by reference mandate a sole-source provider for credit scores. In this rulemaking the Comptroller of the Currency, the members of the Board of Governors of the Federal Reserve System, the members of the Board of the Federal Deposit Insurance Corporation, the Commissioners of the Securities and Exchange Commission, the Acting Director of the Federal Housing Finance Agency, and the Secretary of the Department of Housing and Urban Development are fully aware of the implications of relying on the GSEs' seller-servicer guides. We are not asking that QM and QRM not be aligned. What we are asking and urging is that you embrace the sentiment expressed by Acting Director DeMarco in his testimony before the House Financial Services Committee and work with him to improve competition in the credit scoring marketplace to the benefit of all.

[13] Federal Housing Finance Agency (FHFA) press release dated May 6, 2013, entitled *FHFA Limiting Fannie Mae and Freddie Mac Loan Purchases to "Qualified Mortgages."*

[14] Fannie Mae's *Single Family Selling Guide* dated September 24, 2013. Available at: https://www.fanniemae.com/content/guide/sel092413.pdf or https://www.fanniemae.com/singlefamily/originating-underwriting, page 1232.

[15] Freddie Mac's *Single-Family Seller/Servicer Guide, Volume 1*; Chapter 37, September 24, 2013. Available at: http://www.freddiemac.com/sell/guide/, Sec. 37.5(a).

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Thank you for considering this important issue; please don't hesitate to contact me if you have any questions or would like additional information.

Sincerely,

Barrett Burns

Barrett Burns