Pennsylvania Housing Finance Agency
211 North Front Street
Harrisburg, PA 17101

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Department of the Treasury- RIN 1557-AD40
Docket Number- OCC- 2010-002
(submitted via email-regscomments@occ.treas.gov)

Federal Reserve System- RIN 7100-AD70
Docket Number- R-1411
(submitted via email- regscomments@federalreserve.gov)

Federal Deposit Insurance Corporation- RIN 3064-AD74
(submitted via email- comments@fdic.gov)

US Securities and Exchange Commission- RIN 3235-AK96
File Number S7-14-11
(submitted via email- rule-comments@sec.gov)

Federal Housing Finance Agency- RIN 2590-AA43
(submitted via email- regcomments@fhfa.gov)

Department of Housing and Urban Development
(submitted via www.regulations.gov)

Re: Comments on Risk Retention/Credit Standards

To Each of the Aforementioned Agencies:

Following are comments on the proposed Credit Risk Retention rule ("Proposed Rule").

Our concerns with the Proposed Rule are as follows:

The proposed definition of a Qualified Residential Mortgage ("QRM") will create a vast gap in affordability and will adversely affect minority and lower income households. The 20% requirement is too high and too severe a burden for the vast majority of potential homebuyers in our market niche. There are many ways to mitigate against the risks of reckless underwriting standards and irresponsible mortgage originations while still maintaining affordable inroads for first time buyers, which is a necessary component of a thriving housing market and robust economy.

Given the fragility of the current housing market, the Agencies are urged to work cautiously to ensure that they do not inadvertently make capital for home loans more expensive and investment standards even tighter.

Tried and true FHA standards should be adopted in *toto* for loan origination standards, creating a clear, reliable benchmark for all programs. Picking and choosing among the FHA standards for loan underwriting is confusing and misguided.

By way of background, the Pennsylvania Housing Finance Agency ("PHFA") is a state agency, created and existing pursuant to state law in the Commonwealth of Pennsylvania to provide affordable housing. We are a frequent issuer of tax exempt and taxable bonds to finance residential mortgage loans. Our program has been in existence since 1982 and we have funded more than 145,000 affordable fixed rate mortgage loans for low and moderate income Pennsylvania households.

The consumer mortgages financed by PHFA are originated by private banks, mortgage brokers, and mortgage bankers and then acquired by PHFA with the proceeds of the financing. (The originating banks may not know what the funding source for PHFA's acquisition may be and sometimes, they have not originated the loan in anticipation of selling and assigning the loans to PHFA.) All loans acquired by PHFA must meet PHFA underwriting standards and loan terms and criteria.

PHFA offers second loans which are subordinate position liens, to assist with down-payment and closing costs for first time homeowners and homebuyers with modest incomes and limited assets. Robust homebuyer and homeowner counseling programs, proactive loss mitigation procedures and a consumer mortgage foreclosure assistance program funded by the Commonwealth are additional features of PHFA's home loan programs.

Certain portions of the Proposed Rule are very helpful. Because PHFA is a state agency engaged in affordable mortgage financing, there is a clear exemption for PHFA's financing program adopted by the Proposed Rule and consistent with the exemption specifically authorized in Dodd-Frank. However, we are seeking clarification that this issuer exemption overrides any other provision of the Proposed Rule (especially as terms are broadly defined in the "General Definition and Scope" section). Further, we are suggesting specific changes in the Proposed Rule because we are generally concerned that the enactment of the Proposed Rule may further hamper recovery in the housing markets.

Comments relate to the assigned numbers in the Proposed Rule.

1-4. The definitions of depositor, sponsor, originator are confusing.

Dodd-Frank clearly and expressly exempts municipal issuers such as PHFA from the credit risk retention requirements. As stated in the preamble to our remarks, we acquire loans from the private sector for our financing programs. The fact that we purchase loans that are originated for us by private lenders should not cause the private lenders to be subject to the risk retention rules for the loans we acquire from them, nor do we believe that to be the intent of this section. We think the exemption is meant to supersede the transactional risk retention discussion completely. Otherwise the issuer exemption is meaningless. Please clarify that our understanding of the municipal issuer exemption is correct.

5. No, the risk of nonpayment by the issuer entity is not a necessary part of the definition of credit risk for the implementation of Dodd-Frank. The investor market in general is better at evaluating and charging premiums for credit risk.

7a and b. This is very confusing. We urge you to keep the rules as simple as possible.

8a and b. The next section takes care of this issue. We urge you to keep the rules as simple as possible.

12a and b. Adoption of these standards will definitely impact the residential mortgage market. We expect it will result in higher interest rates and higher costs and fees for mortgages that do not meet the new QRM standard. Most of PHFA's programs are targeted to provide affordable mortgages for first time homebuyers and persons of low and moderate income and we are very familiar with this market. These are the very homebuyers who will be negatively impacted because they usually get closing cost assistance, down-payment assistance, and/or participate in a private mortgage insurance program (because they cannot afford 20% down). Private and public entities often fund closing cost and down-payment assistance programs to help make these homeownership opportunities affordable. It would be a shame to stymie the market from providing community reinvestment act funding, Habitat for Humanity programs, state and local government sponsored assistance programs and employer assisted programs to help people live in the community where they work.

The rather perverse consequence of having a 20% down-payment standard for QRM is that financing will be easier (and cheaper) for those loans to higher income households and more expensive for low and moderate households. Further suggestions for refining the definition of QRM are set forth later in these comments.

In our experience, PHFA did not loosen its underwriting standards during the "housing bubble" years. We have offered thirty year fixed rate mortgages, with solid underwriting. The delinquency and foreclosure rates in our loan portfolio have consistently been better than those experienced in the conventional market. Based on our years of experience, we posit that following solid underwriting is sufficient to ensure that the loans are properly affordable to the households. There is no reason to impose a 20% down-payment standard on homeownership. We do not think this requirement is necessary or appropriate to meet the letter and spirit of Dodd-Frank.

We do note that it is tempting to use the 80% LTV given all the headline news regarding recent home price declines and appraised value erosion. However, this is too simplistic and fails to address vast regional differences in markets and valuations. Further, it will only exacerbate the problems faced by the home loan markets - imposing unrealistically tight credit standards will simply make more banks reluctant to lend to anyone outside these credit standards. The market urgently needs more rationally priced and structured transactions, not less transactions, to stabilize the pricing models and get more inventory moving so that price recovery can occur and confidence can return.

106. The overall approach is sensible, but too strict. The history of the mortgage market and financing models is far deeper than the past decade and the markets generally worked well until the excesses of the "bubble". Look at FHA for example and you will find a successful program overall, insuring loans since 1934, helping to achieve homeownership in a responsible, sustainable way. Under the new proposed definition of QRM, loans with terms similar to FHA program standards would be excluded. Many of the programs administered by state housing finance agencies would also not meet this QRM standard. <u>Yet these programs did not cause the systemic losses and failed investment models that triggered the passage of Dodd-Frank</u>.

107. There will be less demand for non-QRM securitizations, and likely fewer issuers. Issuers will most likely be larger corporate conglomerates. This will, in turn stifle competition, increasing price, decreasing product development and innovation and curtailing the ability to address affordable housing needs.

108. Non-QRM loans will be more expensive and less available. This will definitely impact negatively the affordability for first time homebuyers and persons of low and moderate income. Buyers in rural markets and traditionally underserved markets will likely be negatively impacted the most.

109a. If you are looking at FHA (and we encourage you to do so) as the example, use all of the existing FHA standards. Don't impose new standards and don't pick and choose, which would be confusing and counterproductive.

109b. Other possible standards may be loans originated under a program sponsored by a state housing finance agency or the Federal Home Loan Bank, or as part of a lending institution's Community Reinvestment Act program. Especially in the case of the state housing finance agencies, these HFA programs are specifically tailored to meet individual state mortgage market needs and have consistent and prudent underwriting criteria.

111a. Mortgage insurance should be allowed to offset a higher loan to value ratio than may be otherwise permitted under the QRM definition. Borrowers are already subject to a significantly greater cost when they have less than 20% available for their down-payment and the pricing of private mortgage insurance products is also higher based on the borrower's credit score and loan to value ratios. For example, a borrower with an excellent credit profile obtaining a $200,000 loan and putting 5% down can expect to pay $106 per month for an insurance policy that pays 30% of the lender's loss in the event of default. A borrower with less than perfect credit could expect to pay $190 per month. (see http://www.mgic.com/pdfs/71-61210_natl_bpmi_monthlies.pdf) Putting the cost of the additional risk associated with a higher loan-to-value loan already means these borrowers have more "skin in the game" in terms of their monthly payment obligation.

One of the problems during the mortgage meltdown was the so-called "piggyback" mortgages where a first mortgage for 80% was provided in conjunction with a second for 20% or less, thus finding a loophole for the mortgage insurance requirement. Excluding these types of mortgages from the QRM definition is reasonable (see comments under 'other liens' section).

PHFA has a long history of providing mortgage loans at or above 80% LTV, underwritten to prudent standards. We have years of data for our own risk retention model and with private mortgage insurance companies. Our data shows these loans perform consistently better than state and national averages. We credit this performance to solid, steady and prudent underwriting and steady solid servicing.

We also credit some of this performance success to homeownership counseling and suggest that state and federally supported and administered programs should be considered as an additional risk mitigation factor.

111b. Yes.

111c. LTV ratio limits should be allowed to go up to at least 95% LTV (or 97% in some instances). On a related note, FHA finances up to 96.5% of the purchase price, however the borrower can include the upfront mortgage insurance premium which is currently 1% . This amount is NOT included in the LTV calculation. In essence, the FHA program thus allows 97.5% financing.

112a and b. Mortgage insurance programs should be authorized if they meet at least A tier rating by Standard and Poor's or Moody's, have solid claims paying ability (no problems paying claims for two years), established minimum reserve funds, or demonstrated parity level for the pooled risk in the underlying portfolio.

113. We suggest you adopt in *toto* the FHA standards. Do not pick and choose, it will only confuse the market and create yet more difficulty in the market.

Also, we suggest you allow loans originated under a state housing finance agency program. These are defined programs, designed to address state needs and administered on a state level by entities created under state law and accountable to their consumers.

114a. Other Liens.

The QRM must be in a valid first lien position with clear title. Excluding first mortgages with concurrently closed amortizing second liens from the definition of QRM is reasonable where the second lien is being utilized to circumvent the need for mortgage insurance or as additional debt unrelated to the home purchase (for example, taking out a Home Equity Line of Credit or HELOC).

However, it is NOT reasonable to exclude from the definition of QRM those first mortgages with junior liens used for down-payment and closing cost assistance, or as part of a community development initiative as gap funding to offset the difference between the cost of rehabilitation and/or construction and the market value of the home. These types of liens are generally forgiven or due on sale, transfer or prepayment of the first mortgage. These loans have no bearing on the borrower's ability to repay the first mortgage; where they are amortized, the payment is included with the debt to income underwriting ratios. Further, these programs are essential for the first-time homebuyer market, employer-driven housing assistance programs, community development efforts and low and moderate income households.

Fannie Mae and FHA each have clear guidelines on this topic. See FHA Mortgagee Letters 2008-23 and 2002-22 and the FHA Handbook on Mortgage Credit Analysis for Mortgage Insurance on One-to Four-Unit Mortgage Loans (4155.1) chapter 5, section c. See also Fannie Mae's "Community Seconds" criteria at https://www.efanniemae.com/sf/mortgageproducts/pdf/cschecklist.pdf.

115- 118. Credit Standards.

The proposed credit standards are useful and appropriate general indicators of loan performance. However, they are not practical for the purposes of this Proposed Rule. The definition should be tailored to fit a QRM for purposes of loans included in asset-backed securities. Based on the level of detail and documentation required under the Proposed Rule, it would be extremely cumbersome and time consuming to verify with any degree of certainty that every loan meets the required standards. The MBS market moves quickly and the level of scrutiny this standard would entail would slow the process, increasing the interest rate risk to the issuer, ultimately resulting in a higher cost to consumers.

We suggest the standards to be utilized in the definition of QRM be based on quantifiable elements that can be easily queried. A more efficient method would be to utilize credit score, but for the reasons provided, that is not an acceptable method. This level of detail is more appropriately handled under the proposed rules dealing with the definition of "Qualified Mortgage" under Title XIV of Dodd-Frank.

119. Loan Terms. These are appropriate standards.

120. Loan to Value.

Restricting QRM to loans with 80% LTV will most definitely have a negative impact on the first-time homebuyer market and on products for persons with low and moderate income. These loans will become more expensive. Using FHA standards for some components of the QRM standards but not for others (such as LTV) is inconsistent and confusing. Furthermore, in our program experience the LTV is not the loan performance driver- underwriting standards are. Our data clearly shows our delinquency and loan performance for higher LTV loans to families of modest means still out performs the standard market because we have diligently and consistently applied solid underwriting for thirty year fixed rate loans.

121. Down-Payment.

The proposed down-payment standard is too high for the reasons set forth above. The source of funds standard is reasonable, however, as listed under our comments in #15 above, with regard to credit history, it would be very cumbersome and time consuming to verify with any certainty that every loan in the security has met this standard. This is also a standard more appropriately handled under the proposed rules for "Qualified Mortgage" under Title XIV of Dodd-Frank rather than for inclusion in the definitions applicable to asset securitization.

122. Qualifying Appraisals. This standard is fine.

123. Ability to Repay.

This, like credit history and source of funds, would be very time consuming and difficult to verify in connection with asset securitization. Using FHA standards for some components, but not other components of the QRM is confusing. (FHA underwriting ratios are set at 31 and 43.)

124. Points and Fees.

These would also be difficult to verify as part of an asset securitization.

125-140. Servicing Provisions.

<u>This should not be addressed in the Proposed Rule</u>. These standards are outside the legislative intent of the QRM definition. As specified in Dodd-Frank, the definition is to be based on underwriting and product features. (Section 941(e)(4)(B)). Servicing standards should be established separately, after thorough and complete review and discussion with all of the affected market participants and industries. We look forward to working with you to develop these standards.

141 – 142. Repurchase of Loans.

These proposed standards for repurchase are also outside the legislative intent of the QRM set forth in Dodd-Frank.

143-149. Alternative Approaches.

Having different required levels of risk retention for different loan products would be confusing and cumbersome. The Proposed Rule recognizes the reasonableness of FHA underwriting guidelines. We suggest that FHA be used as the standard across the board. These standards are already widely recognized and understood and they are time-tested. Furthermore, they address all of the criteria proposed as possible standards in Dodd-Frank. In addition, using the FHA standard means that when changes are determined to be necessary to the FHA standards over time, they will be vetted through a unified regulatory protocol and the industry will be attuned to the process.

162. This exemption is correct to broadly allow private securitizations with federally insured and /or guaranteed programs. This is an important component of the multifamily housing mortgage financing market.

163. The federal programs are sufficiently monitored in our experience to ensure the safety and consistency of the securitizations and public interest.

164 a/b/c/d/e/f.

The exemption should be broad enough to cover all federal insurance and guarantee programs. There are already sufficient hurdles in the market and additional restrictions are not necessary to protect investors or the public interest. The federal agencies providing these insurance and guarantees are very proactive in their management of programs, especially in the various mortgage insurance and guarantee multifamily mortgage financing programs administered through HUD and the Rural Development.

165. The risk retention requirements should not be applied to any ABS or collateral directly or indirectly issued by, guaranteed by or insured by a state or municipal issuers.

166 a/b/c/d. The exemption should be broadly construed. The exemption should cover special purpose entities created by municipal entities. These entities are fully accountable to the public and are generally created to accomplish purposes consistent with the mission of the municipal entity.

Thank you very much for affording us an opportunity to provide our comments on the Proposed Rule. Please feel free to contact either of us (as set forth below) if you have any questions regarding any aspect of our suggestions or discussion.

Very truly yours,

Kate Newton
Director of Homeownership Programs
717-780-3891

Rebecca L. Peace
Chief Counsel
717-780-3849