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DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 43
[Docket No. OCC-2019-0012]

FEDERAL RESERVE SYSTEM
12 CFR Part 244
[Docket No. OP-1688]

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 373
RIN 3064-ZA07

FEDERAL HOUSING FINANCE AGENCY
12 CFR Part 1234
[Notice No. 2021-N-14]

SECURITIES AND EXCHANGE COMMISSION
17 CFR Part 246
[Release No. 34-93768]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
24 CFR Part 267
[FR-6172-N-04]

Credit Risk Retention-Notification of Determination of Review

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); U.S. Securities and Exchange Commission (Commission); Federal Housing Finance Agency (FHFA); and Department of Housing and Urban Development (HUD).

ACTION: Determination of results of interagency review.

SUMMARY: The OCC, Board, FDIC, Commission, FHFA, and HUD (the agencies) are providing notice of the determination of the results of the review of the definition of qualified residential mortgage, the community-focused residential mortgage exemption, and the exemption

for qualifying three-to-four unit residential mortgage loans, in each case as currently set forth in the Credit Risk Retention Regulations (as defined below) as adopted by the agencies. After completing the review, the agencies have determined not to propose any change at this time to the definition of qualified residential mortgage, the community-focused residential mortgage exemption, or the exemption for qualifying three-to-four unit residential mortgage loans.

FOR FURTHER INFORMATION CONTACT:

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Board: Flora H. Ahn, Special Counsel, (202) 452-2317, David W. Alexander, Senior Counsel, (202) 452-287, or Matthew D. Suntag, Senior Counsel, (202) 452-3694, Legal Division; Sean Healey, Lead Financial Institution Policy Analyst, (202) 912-4611, Division of Supervision and Regulation; Karen Pence, Deputy Associate Director, Division of Research & Statistics, (202) 452-2342; Nikita Pastor, Senior Counsel, Division of Consumer & Community Affairs (202) 452-3692; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Rae-Ann Miller, Senior Deputy Director, (202) 898-3898; Kathleen M. Russo, Counsel, (703) 562-2071, krusso@fdic.gov; Phillip E. Sloan, Counsel, (202) 898-8517, psloan@fdic.gov, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

Commission: Arthur Sandel, Special Counsel, (202) 551-3850, in the Office of Structured Finance, Division of Corporation Finance; or Chandler Lutz, Economist, (202) 551-6600, in the Office of Risk Analysis, Division of Economic and Risk Analysis, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

FHFA: Ron Sugarman, Principal Policy Analyst, Office of Capital Policy, (202) 649-3208, Ron.Sugarman@fhfa.gov, or Peggy K. Balsawer, Associate General Counsel, Office of General Counsel, (202) 649-3060, Peggy.Balsawer@fhfa.gov, Federal Housing Finance Agency, Constitution Center, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

HUD: Kurt G. Usowski, Deputy Assistant Secretary for Economic Affairs, U.S. Department of Housing & Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202-402-5899 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay at 800-877-8339.

SUPPLEMENTARY INFORMATION:

The Credit Risk Retention Regulations are codified at 12 CFR part 43; 12 CFR part 244; 12 CFR part 373; 17 CFR part 246; 12 CFR part 1234; and 24 CFR part 267 (the Credit Risk Retention Regulations). The Credit Risk Retention Regulations require the OCC, Board, FDIC and Commission, in consultation with the FHFA and HUD, to commence a review of the following provisions of the Credit Risk Retention Regulations no later than December 24, 2019: (1) the definition of qualified residential mortgage (QRM) in section _.13 of the Credit Risk Retention Regulations; (2) the community-focused residential mortgage exemption in section _.19(f) of the Credit Risk Retention Regulations; and (3) the exemption for qualifying three-to-four unit residential mortgage loans in section _.19(g) of the Credit Risk Retention Regulations (collectively, the subject residential mortgage provisions).

Notification announcing the commencement of the review was published in the *Federal Register* on December 20, 2019 (84 FR 70073). Notification announcing the agencies' decision

to extend to June 20, 2021, the period for completion of the review and publication of notification disclosing determination of the review was published in the *Federal Register* on June 30, 2020 (85 FR 39099). On July 22, 2021, the agencies published another notification in the *Federal Register*, announcing their decision to extend the period to complete the review further to December 20, 2021 (86 FR 38607).

The agencies have completed their review of the subject residential mortgage provisions and this notification discloses the agencies' determination as a result of the review.

Overview.

Section 15G of the Securities Exchange Act, as added by section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), required the Board, FDIC, OCC (collectively, the Federal banking agencies) and the Commission, together with, in the case of the securitization of any "residential mortgage asset," HUD and FHFA, to jointly prescribe regulations that (i) require a securitizer to retain not less than five percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party, and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G and the agencies' implementing rules.[1] Section 941 of the Dodd-Frank Act also provides that a securitizer shall not be required to retain any part of the credit risk for an asset that is transferred, sold, or conveyed through the issuance of ABS interests by the securitizer, if all of the assets that collateralize the ABS interests are QRMs, as that term is jointly defined by the agencies. Section 941 provides that the definition of QRM can be "no

[1] See 15 U.S.C. 78o-11(b), (c)(1)(A) and (c)(1)(B)(i).

broader than" the definition of a "qualified mortgage" (QM) as that term is defined under section 129C of the Truth in Lending Act (TILA),[2] as amended by the Dodd-Frank Act, and regulations adopted thereunder.[3] The agencies decided to align the definition of QRM with the definition of QM.[4] The Credit Risk Retention Regulations define QRM to mean a QM, as defined under section 129C of TILA and Regulation Z issued thereunder at 12 CFR part 1026, as amended from time to time.

As part of the Credit Risk Retention Regulations, the agencies are required to review the definition of QRM periodically to assess developments in the residential mortgage market, including the results of the statutorily required five-year review by the Consumer Financial Protection Bureau (CFPB) of the ability-to-repay rules and the QM definition. In conducting the review (the commencement of which was announced on December 20, 2019) and reaching their conclusions, the agencies considered what has been learned since 2014 about whether the loan and borrower characteristics specified in the QRM definition are predictive of a lower risk of default and also assessed how mortgage credit access conditions have changed since 2014, using data from the date on which the Credit Risk Retention Regulations were announced, October 22, 2014, through December 31, 2019 (the review period). Among other things, the agencies analyzed Fannie Mae and Freddie Mac (the Enterprises) and non-Enterprise loan-level mortgage origination and performance data (including data on originations, defaults, and loan and borrower characteristics), held discussions with market participants, and reviewed academic research, policy research prepared by research and advocacy organizations, and the results of the

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[2] 15 U.S.C. 1639c.

[3] See 15 U.S.C. 78o-11 (e)(4)(C).

[4] See 79 FR 77740 (Dec. 24, 2014).

CFPB's Ability-to-Repay and Qualified Mortgage Rule Assessment Report issued in 2019.[5] The analysis also considered the effects on default risk of additional loan and borrower characteristics not included in the QRM definition.

The analysis confirmed that the loan and borrower characteristics specified in the QM definition in effect during the review period were predictive of a lower risk of default. In addition, the agencies found that, while credit conditions have improved since 2014, they remain tight relative to longer-term norms.[6]

After analyzing those data, reviewing those analyses and considering the importance of maintaining broad access to credit, the agencies have decided, at this time, not to propose to amend the definition of QRM, the community-focused residential mortgage exemption, or the exemption for qualifying three-to-four unit residential mortgage loans.[7]

Public Comments.

In response to the notification of commencement of the review, which included a request for comment, the agencies received one comment (on behalf of 37 organizations) prior to the end of the comment period. The comment requested that the agencies defer the review until after the CFPB completed its then-proposed rulemaking to make changes to the QM definition, which would automatically modify the QRM definition to the extent no changes are made to the

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[5] Available at *https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf*.

[6] Measures of mortgage credit availability, such as those produced by the Urban Institute (www.urban.org), suggest that credit availability during the review period was tight relative to levels in the early 2000s. Tight credit conditions generally refer to periods of reduced availability of credit.

[7] The Credit Risk Retention Regulations require the agencies to conduct a review of the subject residential mortgage provisions upon the request of any agency, specifying the reason for such request. Accordingly, the agencies may conduct a further review of the subject residential mortgage provisions at any time.

definition.[8]

In response, the agencies note that the review is intended to consider the definition of QRM in light of changes in mortgage and securitization market conditions and practices and how the QRM definition has affected residential mortgage underwriting and securitization of residential mortgage loans under evolving market conditions during the review period. The CFPB did not issue the final QM changes until December 10, 2020, well after the review period.[9]

In June 2021, the agencies received a second comment letter (on behalf of six organizations), expressing support for the continued alignment of the definitions of QRM and QM.[10]

Definition of QRM.

The agencies' decision in 2014 to equate the QRM and QM definitions in the Credit Risk Retention Regulations was based on two main factors. First, the Dodd-Frank Act mandated that the definition of QRM "tak[e] into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default."[11] Second, the Dodd-Frank Act specified that the QRM definition could not be broader than the QM definition, and the agencies were concerned that a QRM definition that was narrower than the QM definition could

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[8] The letter noted that an advance notice of proposed rulemaking had been issued by the CFPB and that the CFPB was expected to follow with a notice of proposed rulemaking.

[9] The agencies nonetheless reviewed what were, at the time of the review, the CFPB's changes to the general definition of a QM (from a definition based, in part, on debt-to-income (DTI) to one based on loan pricing). Based upon the information provided by the CFPB to support the changes, the agencies concluded that these changes, if implemented, were not likely to significantly affect the overall impact of the QRM definition on the mortgage market.

[10] While this comment letter also praised the agencies for delaying the issuance of the review determination until the CFPB changes were finalized, as noted above, the agencies did not delay the issuance of their determination to consider those changes as those changes occurred outside of the review period.

[11] 15 U.S.C. 78o-11(e)(4)(B).

exacerbate already-tight mortgage credit conditions existing at that time.

In the current review of the definition of QRM, the agencies considered whether the loan and borrower characteristics specified in the QM definition are predictive of a lower risk of default and how mortgage credit conditions have changed since 2014. The agencies confirmed that the QRM definition that was in effect for the review period – with the requirement that debt-to-income (DTI) ratios generally not exceed 43 percent – was predictive of lower default rates.

The agencies used loan-level mortgage origination and performance data on Enterprise and non-Enterprise loans in the review.[12] The agencies followed the performance of loans originated between 2012 and 2015 and found that, after four years, loans with a DTI ratio greater than 43 percent were more likely to have become 90-days delinquent than loans with lower DTI ratios. The review also confirmed that the measurement of DTI had improved from when the analysis was last conducted, with a greater proportion of full documentation mortgage loans in the dataset in 2019 than in 2014. In the review, the agencies also considered the effects of additional loan and borrower characteristics on default risk.[13]

The agencies also considered whether the QRM definition, as aligned with the QM definition, affected the availability of credit. While credit conditions had improved since 2014, they remained tight during the review period relative to longer-term norms.[14] However, the agencies determined that the QRM definition did not appear to be a material factor in credit conditions during the review period, in part because so much of the market was funded through

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[12] Mortgage servicing data from the Enterprises was used for this analysis, and the Commission staff contributed its analysis using mortgage servicing data from CoreLogic.

[13] The agencies confirmed that loan-to-value (LTV) ratio and credit score, which the agencies considered in the 2014 rulemaking but did not incorporate into the QRM definition, also predict default.

[14] Measures of mortgage credit availability, such as those produced by the Urban Institute, suggest that credit availability during the review period was tight relative to levels in the early 2000s.

Enterprise and Ginnie Mae securitizations.[15] More generally, the agencies concluded from the review that risk retention remains an effective tool for aligning the interests of securitizers, originators, and investors, and reducing default risk on certain loans. In addition, the Credit Risk Retention Regulations do not appear to be weighing materially on mortgage credit availability.

Finally, the agencies considered whether the QRM definition, as aligned with the QM definition, affected the securitization market. As the agencies anticipated, the QRM definition contributed to the bifurcation of the private-label securitization market between securitizations of "prime/jumbo" loans[16] which typically meet the characteristics of QM and are, therefore, exempt from risk retention as QRM, and securitizations of "non-QM" loans that are not QRM and, therefore, generally not exempt from risk retention. However, according to industry sources, the market for securitizations of non-QM loans was quite competitive through the end of 2019, which suggests that risk retention did not materially affect the ability of issuers in this market to obtain capital needed for mortgage originations.[17]

In light of the foregoing, the agencies are not proposing to amend the definition of QRM at this time.

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[15] The Enterprises are subject to risk retention, but benefit from a provision in the Credit Risk Retention Regulations that allows their full guarantee of principal and interest on mortgage backed securities to count as an eligible form of risk retention while they are under conservatorship or receivership and have capital support from the U.S. Treasury. In contrast to the Enterprises, Ginnie Mae, a wholly owned U.S. Government corporation within HUD, is exempt from risk retention pursuant to statutory direction in the Dodd-Frank Act. See 15 U.S.C. 78o-11(c)(1)(G)(ii) and (e)(3)(B).

According to estimates by Inside Mortgage Finance and the Urban Institute, the annual share of the dollar volume of first-lien mortgage originations that were either acquired by the Enterprises or securitized through an FHA or VA program has ranged from about 62 to 76 percent over the period 2015 to 2020(*https://www.urban.org/sites/default/files/publication/104602/july-chartbook-2021_2.pdf*).

[16] These securitizations are typically collateralized by jumbo mortgages that are ineligible for purchase by the Enterprises because they exceed the conventional loan limits set by the FHFA and by prime loans that are offered to highly qualified borrowers. These mortgages typically meet the QRM standards.

[17] *See, e.g.,* "On the Rise: Trading Desks Focusing on Non-QM Paper." *Inside MBS & ABS*, Inside Mortgage Finance Publications, 2019.30, 6.

Community-focused residential mortgages.

Community-focused residential mortgages are mortgages made by community development financial institutions (CDFIs), community housing development organizations, certain non-profits, or certain secondary financing providers, or through a state housing finance agency (HFA) program. These entities frequently make mortgage loans using flexible underwriting criteria that are not compatible with the TILA ability-to-repay requirements. To ensure continued borrower access to these loan programs, the CFPB exempted these loans from the TILA ability-to-repay requirement and, as a result, such loans are unable to be made as QMs. Similarly, the agencies provided a separate exemption for these loans from the risk retention requirement. The agencies justified this exemption by citing the "strong underwriting procedures to maximize affordability and borrower success in keeping their homes" and noted that the exemption "serve[s] the public interest because these entities have stated public mission purposes to make safe, sustainable loans available primarily to [low-to moderate-income] communities."[18] In the years since adoption of the Credit Risk Retention Regulations, only a few CDFIs have used this exemption.[19] While HFAs have not used this exemption, discussions with market participants revealed that private securitization could become a more attractive option if a state HFA needed to issue bonds in excess of its tax-exempt allotment. Therefore, the agencies, at this time, are not proposing to amend the exemption for community-focused residential mortgages.

Three-to-four unit residential mortgages.

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[18] 79 FR 77602, 77694 (December 24, 2014).

[19] The agencies identified seven securitizations that relied upon this exemption since 2019; these securitizations funded approximately $610 million in community-focused residential mortgages.

Mortgages that are collateralized by three-to-four-unit properties are defined as "business purpose" loans rather than consumer credit transactions under TILA, and as such are not subject to the ability-to-repay requirement, and are unable to qualify as QMs. The agencies recognized that securitization markets typically pool mortgages collateralizing three-to-four-unit residential mortgages with other residential mortgage loans. The agencies also provided an exemption for three-to-four-unit residential mortgages that otherwise would qualify as QMs to ensure that credit did not contract to this part of the market. The number of mortgages collateralized by three-to-four-unit properties, and the percentage of such mortgages funded through private-label securitizations, is small.[20] The exemption also does not appear to be spurring any significant speculative activity in the securitization market and, at the same time, these properties are a source of affordable housing. Therefore, the agencies are not proposing to amend this exemption at this time.

[20] Based on data reported under the Home Mortgage Disclosure Act (HMDA), there were about 35,000 such purchase originations in 2018 and 2019 combined, and of these, less than 2 percent appear to have been funded through private-label securitizations.

Michael J. Hsu
Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,
Secretary of the Board.

Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on December 14, 2021.
James P. Sheesley,
Assistant Executive Secretary.

Dated: December 14, 2021

By the Securities and Exchange Commission
Vanessa A. Countryman
Secretary.

Sandra L. Thompson
Acting Director, Federal Housing Finance Agency.

By the Department of Housing and Urban Development
Lopa P. Kolluri
Principal Deputy Assistant Secretary for Housing
Federal Housing Commissioner.