ROBERT MENENDEZ
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ENERGY AND NATURAL RESOURCES
FINANCE
FOREIGN RELATIONS

528 SENATE HART OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-4744

ONE GATEWAY CENTER
11TH FLOOR
NEWARK, NJ 07102
(973) 645-3030

208 WHITE HORSE PIKE
SUITE 18-19
BARRINGTON, NJ 08007
(856) 757-5353

United States Senate

WASHINGTON, DC 20510-3005

RECEIVED
ES136797
2010 DEC -6 PM 3:08
CHAIRMAN'S
CORRESPONDENCE UNIT

November 18, 2010

The Honorable Shaun Donovan
Secretary of Housing and Urban Development
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
2001 C Street, NW
Washington, DC 20001

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

The Honorable John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
1775 Duke Street
Alexandria, VA 22314

Dear Secretary Donovan, Chairman Bair, Chairman Bernanke, Chairman Schapiro, and Messrs. DeMarco and Walsh,

As a cosponsor of Senate Amendment #3956, which added the exemption for "qualified residential mortgage" to the risk retention provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), I am writing to express my continued interest in this issue and in the implementation of the statutory provisions. I believe that properly crafted regulations will provide access to safe, stable and affordable home loans for creditworthy borrowers while granting investors confidence that the mortgage assets backing the securities they purchase will meet or exceed their performance expectations. I look forward to working with you to ensure that, consistent with the language of Section 941 of the Dodd-Frank Act, the regulatory definition of "qualified residential mortgage" incorporates mortgage terms and features that result in lower risk of default.

While risk retention can serve as a strong deterrent to the excessive risk taking that contributed to the crisis, it can also impose costs and reduce liquidity in the mortgage market. Applied across the board, risk retention could raise the cost of mortgage credit even on well-underwritten loans to highly qualified borrowers. That's why I supported an amendment that would encourage lenders to originate safe, stable and affordable mortgages to borrowers with the demonstrated capability to make the monthly payments required. With this amendment, the deterrent value of risk retention is focused where it should be, on lax underwriting standards and risky product features rather than on all residential mortgages.

As ultimately enacted in Section 941(b) of the Dodd-Frank Act, this provision requires the Securities and Exchange Commission, the Secretary of Housing and Urban Development, the Director of the Federal Housing Finance Agency, and the Federal banking agencies jointly to issue regulations exempting "qualified residential mortgages" from the risk retention provisions of Subtitle D. These agencies must jointly define the term "qualified residential mortgage," taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as documentation and verification of borrowers' financial resources; standards regarding residential income and debt to income ratios; factors that mitigate the potential for payment shock; mortgage guarantee or other insurance or credit enhancement obtained at the time of origination that reduces the risk of default; and prohibitions on balloon payments, negative amortization, prepayment penalties, interest-only payments and other features that increase the risk of borrower default.

In supporting this amendment, it was my clear legislative intent that underwriting and product features that lower the risk of default according to available data be considered. These features may include full documentation of borrower income and assets, reasonable total debt-to-income ratios and restrictions on risky loan features, such as negative amortization and balloon payments, and the protections provided by mortgage insurance. The mortgage insurance provision ensures that the qualified residential mortgage exemption can serve those consumers who cannot afford a 20 percent down payment while putting substantial private capital at risk to drive underwriting discipline.

As discussed above, I believe the definition of "qualified residential mortgage" should delineate a category of mortgages that pose less risk to borrowers, lenders and investors based on attributes that have been demonstrated to result in a lower risk of borrower default and avoidance of features that have been demonstrated to result in a higher risk of borrower default. It is important that this definition be drawn broadly enough to support the recovery of the housing market, while remaining rooted in empirically sound underwriting and product standards that will encourage leaders to originate prudently underwritten loans and avoid increased costs to homebuyers associated with the risk retention requirements. As you undertake the implementation of Section 941(b), I look forward to discussing with you the process you will use to review historical loan performance data and the conclusions that you draw from that data.

Sincerely,

ROBERT MENENDEZ
United States Senator

cc: The Honorable Timothy Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220