PrimeLending
A PlainsCapital Company

July 13, 2011

Robert E. Feldman, Executive Secretary
Attention: RIN 7100-AD70
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Jennifer J. Johnson, Secretary
Attention: Docket No. R–1411
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590–AA43
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, N.W.
Washington, DC 20552

Regulations Division, Office of General Counsel
Attention: Docket No. FR-5504-P-01
Department of Housing and Urban Development
451 7th Street, S.W., Room 10276
Washington, DC 20410–0500

Elizabeth M. Murphy, Secretary
Attention: File No. S7–14–11
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549–1090

Office of the Comptroller of the Currency
Attention: Docket No. OCC-2011-0002
250 E Street, S.W.
Mail Stop 2-3
Washington, DC 20219

Re: Credit Risk Retention

Ladies and Gentlemen:

I appreciate the opportunity to submit this letter of comment on the proposed rule to implement the credit risk retention requirements of Section 941 of the Dodd-Frank Act (the "Proposed Rule") on behalf of PrimeLending, a PlainsCapital Company ("PrimeLending"). As President and CEO of PrimeLending, I wish to convey our deep concerns about the effects that the Proposed Rule will have on the mortgage lending industry, on our economy as a whole and, most importantly, on American families.

History and Business of PrimeLending and PlainsCapital Bank

PrimeLending was established in 1986 by Ms. Roseanna McGill, and since 2000 it has been a wholly-owned subsidiary of PlainsCapital Bank, one of the largest independent banks in the United States and a member of the Federal Reserve System, the deposits of which are insured by the FDIC. PrimeLending lends in all 50 states and the District of Columbia, and we have more than 1,900 employees and offices in 38 states. PrimeLending is a retail mortgage loan originator that funds and closes loans in its own name using a warehouse line of credit provided by PlainsCapital Bank. With rare exceptions, the loans originated by PrimeLending are sold on the secondary market to various investors.

According to MortgageDataWeb.com, PrimeLending is currently the 13th largest retail loan originator in the United States, with approximately $7.6 billion in mortgage loan originations in 2010. PrimeLending was ranked as the number three Federal Housing Administration (FHA) lender in Texas and the number 13 FHA lender in the United States for 2010.

We believe our greatest success is the profound positive impact of our business on American families. In 2010, PrimeLending funded approximately $4.5 billion in purchase money loans, which helped almost 25,000 families achieve the dream of homeownership. PrimeLending also made over $2.5 billion in refinance loans and $715 million in cash-out refinance transactions, helping reduce the debt burden for about 11,000 families/individuals (refinance) and providing cash for such projects as home improvement, education, or debt consolidation for over 3,500 families/individuals (cash-out refinance).

As a retail mortgage loan originator, PrimeLending develops leads for individuals that may be in need of a mortgage loan, takes a loan application from such individuals, and then underwrites, closes and funds loans from a warehouse line of credit provided by PlainsCapital Bank. PrimeLending employs a top-notch staff of dedicated underwriters who ensure that each loan meets the stringent requirements imposed by state and federal regulations, as well as the high expectations of our secondary market investors. After a loan is closed and funded, PrimeLending will sell individual whole loans to investors in the secondary market. Typically, PrimeLending will identify an investor that will purchase each loan when it is originated, and we underwrite each loan according to that investor's guidelines to ensure that each loan can be sold into the secondary market as efficiently as possible. If we are unable to sell a particular loan, then we will hold the loan in portfolio and service the loan. Holding and servicing loans is not a significant part of PrimeLending's business model, so we make every effort to originate loans that meet the highest underwriting standards. The flow of loans from PrimeLending to the secondary market is critical to the sustainability of PrimeLending—the proceeds from the loan sales allow the warehouse line obligations to be retired, thereby creating capacity for new mortgage loans. Because of this business model, PrimeLending has cultivated a skilled secondary marketing department that, among other things, facilitates business relationships with investors and manages PrimeLending's exposure to interest rate risks. PrimeLending is approved to securitize loans through Ginnie Mae, but otherwise it does not engage in mortgage loan securitization activities.

The Proposed Rule

Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") requires the SEC, OCC, Fed and FDIC (the "Agencies"), and with respect to only residential mortgage assets, HUD and the FHFA, to jointly issue regulations requiring a securitizer to retain certain percentages of credit risk of securitized assets collateralizing an asset backed security ("ABS"). The Act requires that regulations:

- Differentiate among asset classes, including residential mortgages, commercial mortgages, commercial loans, auto loans and other classes the ABS agencies deem appropriate;
- Address the risk retention requirements of collateralized debt obligations ("CDOs") and securities collateralized by CDOs or other ABS; and
- Establish the permissible forms of risk retention and the minimum duration.

The percentage of retained credit risk specified for securitized assets that are not qualified residential mortgages (QRMs) is to be not less than five percent. ABS backed entirely by QRMs will be exempt from any risk retention requirement. The Agencies, together with HUD and the FHFA, are required to define the term "qualified residential mortgage", taking into consideration the documentation and verification of the mortgagor's financial resources, loan product features, mortgages covered by mortgage insurance or other types of credit enhancement that reduce the risk of default, and the restricted use of mortgage features associated with higher risk of default (e.g., balloon payments, negative amortization). Pursuant to the Act, the Agencies proposed rules requiring that a sponsor of an ABS retain credit risk either by retaining five percent (5%) of the par value of ABS issued or five percent (5%) of the assets securitized in the transaction. A regulatory definition of QRMs has also been proposed by the Agencies. To be eligible as a QRM under the Proposed Rule, a mortgage loan must be a closed-end first-lien mortgage to purchase or refinance a one-to-four family property. It cannot have product features such as negative amortization, interest-only payments, or permit large interest rate increases. Under the proposal, a QRM must meet certain "conservative" debt-to-income ratios and limitations on the number of "derogatory" factors in the borrower's recent credit history. QRM eligibility also requires a 20% down payment and a maximum loan-to-value (LTV) of 80% for purchase loans (with no knowledge of a junior lien at closing) and a maximum LTV of 75% on refinance loans (noncash-out) and 70% for cash-out refinance loans.

The Definition of QRM

The Agencies requested comment on many questions about the Proposed Rule, including the following:

> 106. Is the overall approach taken by the Agencies in defining a QRM appropriate?

In response to Question 106: We believe that the approach taken by the Agencies in defining a QRM has resulted in an overly narrow definition that will result in large numbers of qualified borrowers being unable to obtain a mortgage loan.

We believe proper underwriting requires a holistic approach when evaluating factors such as debt-to-income (DTI) ratios, minimum down payment and LTV ratios. These important factors should be reviewed in concert with each other to determine a borrower's creditworthiness. In addition, we believe various compensating factors should be considered to determine the borrower's ability to repay the loan. However, the QRM definition contained in the Proposed Rule ignores these practices by requiring QRM loans to meet, or exceed, all of the minimum levels for DTI, down payment and LTV, without comparing the factors to each other or consideration of compensating factors. This overly-conservative definition of QRM will exclude even well-qualified borrowers with a demonstrated ability to repay.

As such, we recommend that the definition of QRM be more closely aligned with the definition of a "qualified mortgage" (QM) as drafted in the Federal Reserve Board's proposed rule amending Regulation Z (Docket No. R–1417). While we have concerns about that proposed rule, we believe the general approach provides safeguards to ensure a borrower's ability to repay and allows mortgage lenders to utilize sound underwriting practices in evaluating potential borrowers. Lenders like PrimeLending have relied on sound underwriting practices for decades as a means of providing mortgage loans to qualified borrowers. Given our business model, it is imperative to our success that we continue to do so, thereby naturally preventing the origination of loans to unqualified borrowers.

We strongly encourage the Agencies to consider broadening the definition of QRM. By doing so, you would help ensure that millions of qualified Americans seeking the dream of homeownership would not be unfairly denied a home loan based on overly narrow QRM requirements.

Effects of the Proposed Rule

The Agencies further requested comment on the following questions.

> 107. What impact might the proposed rules have on the market for securitizations backed by QRM and non-QRM residential mortgage loans?
>
> 108. What impact, if any, might the proposed QRM standards have on pricing, terms, and availability of non-QRM residential mortgages, including to low and moderate income borrowers?

Our responses to the foregoing questions will illustrate just how devastating the effects of the Proposed Rule will be on the mortgage lending industry, on our economy and, most importantly, on American families.

Perhaps the best illustration we can provide of the negative effects of the Proposed Rule on the mortgage lending industry is a quantitative look at the effects on the business we know best: that of PrimeLending. We conducted an analysis of PrimeLending's 2010 mortgage loan production under the proposed QRM definition and made determinations for purchase-money loans, refinances of existing loans, and cash-out refinance loans as shown in the following table.

Effect of Proposed QRM Definition on PrimeLending 2010 Loan Production[1]

	Total PrimeLending 2010 Loan Production		Would Not Qualify Based on Proposed QRM Definition		% Would Not Qualify Based on Proposed QRM Definition	
	Loans	**Volume**	**Loans**	**Volume**	**% Loans**	**% Volume**
Purchase-Money Loans	24,969	$4,491,201,848	5,565	$1,138,032,551	22.3%	25.3%
Refinances	11,044	$2,527,680,883	5,301	$1,291,084,771	48.0%	51.1%
Cash-Out Refinances	3,596	$715,399,281	2,389	$493,237,110	66.4%	68.9%
	39,609	**$7,734,282,012**	**13,255**	**$2,922,354,432**	**33.5%**	**37.8%**

[1] The universe of loans for this research included all loans funded by PrimeLending in 2010. For purposes of this illustration, GSE backed loans did not meet the QRM standard because the GSE exemption contained in the Proposed Rule is temporary. The exemption is only valid while the GSEs are in conservatorship.

The import of this research with respect to the effects of the proposed QRM definition is astonishing. The Proposed Rule would have prevented over 13,000 borrowers from purchasing a home or refinancing a loan with PrimeLending in 2010 if PrimeLending were unable to continue making and selling non-QRM mortgage loans.[2]

As can be seen from the foregoing table, total 2010 loan production was $7,734 billion. Of this total production, more than one-third ($2.922 billion by loan volume) would not have qualified for QRM treatment. Consider the significance of this when viewed by individual loan category. With respect to purchase money loans, 25% of total loan production (by dollar volume) would not have qualified for QRM treatment under the rules as proposed. Application of the proposed QRM standards to PrimeLending's refinance transactions indicated that 51% of such transactions (by dollar volume) would not have qualified for QRM treatment. In connection with the home equity loans made by PrimeLending in 2010, approximately 69% of the 2010 loan production of this type (by dollar volume) would not have qualified for QRM treatment.

As noted previously, under the proposal as currently contemplated, $2.922 billion of PrimeLending's 2010 loan volume would not have qualified for QRM treatment. It is unclear whether PrimeLending would have been able to sell these non-QRM loans or, if they could be sold, whether they would have been sold at a greatly reduced price due to the risk-retention requirements and expenses imposed on securitizers. If unable to sell these loans, because of the significant costs associated with non-QRM loans, PrimeLending would experience an adverse impact upon our ability to continue to produce loans at our 2010 volumes. If unable to sell these loans, PrimeLending would have to choose either to not make these 13,000 loans (and thereby deprive 13,000 families of the credit that they sought from PrimeLending) or to invest in the costs associated with servicing these loans. If choosing the latter, PrimeLending's ability to continue originating loans at the 2010 volume would be greatly diminished because the costs of servicing the loans held in portfolio would both deplete our available warehouse line and reduce our capital through the investments necessary to establish a servicing operation or to pay a third party to service the loans on our behalf. If the loans were sold but at a reduced sales price, then that, too, would affect PrimeLending's ability to continue to provide credit for these 13,000 families, as it may prove unprofitable to do so.

If PrimeLending did not make non-QRM loans, $1.138 billion (dollar volume) in purchase money loans would not have been made in 2010. This means almost 5,600 families would have been unable to purchase homes in 2010 with PrimeLending's assistance. Moreover, this money would have not been available from PrimeLending to help stimulate the recovery of the real estate market through the provision of purchase-money proceeds. Expanding such an effect across all mortgage lenders would have a substantial adverse impact on the availability of funds to purchase homes for consumers and dramatically slow the recovery of the U.S. housing sector.

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[2] It is unlikely that borrowers obtaining a non-QRM loan would be able to obtain a government-backed loan.

In the refinance market segment, PrimeLending's typical refinance transaction (which would not qualify for QRM treatment) provided the average consumer with over $3,800 in savings per year on mortgage debt service. This is money that consumers were able to utilize for spending (resulting in stimulation to the U.S. economy) or savings (resulting in more capital available for investment and possibly contributing to the borrower's retirement savings). Similarly, approximately $493 million in home equity loans—two-thirds of all borrowers obtaining home equity loans from PrimeLending in 2010—would not have been available. Home equity loan proceeds are often used for debt consolidation, financing education, home improvements, or general spending; each of which have a further stimulative effect on the economy that would be lost but for the loan.

Furthermore, analysts have estimated that the Proposed Rule would have a direct impact upon the cost of mortgages. While estimated costs vary, depending on assumptions, a recent report from Moody's Analytics determined that after the resolution of FNMA and FHLMC, "the typical non-QRM borrower could see mortgage rates rise by between 75 and 100 basis points."[3] The report goes on to explain:

> Pushing up rates will be three factors: 1) QRM eligibility, which will add 30 to 50 basis points to non-QRM loans; 2) the premium capture rule, which will add 10 to 15 basis points; and 3) the lack of direct government backing and reduced liquidity in the non-QRM mortgage market, which will add approximately 35 basis points.[4]

Such a rise in interest rates would have a negative effect upon the availability of credit for low-to moderate-income borrowers even as they struggle with increasing down-payment requirements.[5]

<u>Premium Capture Cash Reserve Account (PCCRA)</u>

The Agencies also asked the following question in their proposal:

> 82. Do you believe the premium capture cash reserve account will be an effective mechanism at capturing the monetization of excess spread, promoting sponsor monitoring of credit quality, and promoting the sound underwriting of securitized assets?

PrimeLending is concerned about the potential negative impacts of this unprecedented proposal. Although PrimeLending has no plans to sponsor or originate any non-Ginnie Mae Asset Backed Securities (ABS), we believe this proposal would have an adverse effect on PrimeLending's ability to

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[3] Mark Zandi and Cristian deRitis, *Reworking Risk Retention*, Special Report from Moody's Analytics, p. 5 (June 20, 2011)(note omitted.)

[4] *Id.*

[5] Mortgage Bankers Association, *Proposed Risk Retention Regulations Reduce Credit Options for Qualified Borrowers*, p. 5 (June 2011)("Minorities and first-time borrowers will fare even worse under the QRM's high LTV and low DTI requirements, as these families typically have much less savings.")

sell loans into the secondary market. We believe the PCCRA would capture the excess spread generated by securitization of Mortgage Backed Securities (MBS), which goes far beyond the statutory requirement for ABS/MBS sponsors to retain a portion of each new security. The PCCRA proposal would require sponsors to sequester those funds, which would inevitably lead to higher interest rates and closing costs for borrowers. Some experts have warned that PCCRAs could eliminate the economic incentives for the majority of private market securitizations, which could jeopardize our ability to originate quality mortgages for American homeowners.

Further, we believe the underlying risk retention requirements will incentivize sponsors to improve monitoring of credit quality and underwriting because the sponsors will retain a substantial interest in every new security. We can find no evidence that the PCCRA concept was contemplated by Congress, and we believe the potential negative effects far outweigh any benefits derived from the PCCRA proposal. Therefore, we respectfully request that this provision be removed from the final rule.

As can be understood from the foregoing, we at PrimeLending have deep reservations about the narrow definition of QRM contained in the Proposed Rule. Adopting this definition will have an adverse impact on the ability of mortgage lenders like PrimeLending to continue to provide loan funds to American families and, in turn, provide a vital stimulus to the economy and the financial wellbeing of consumers. We urge the Agencies to reexamine the Proposed Rule and to redraft the proposal to mitigate the concerns and effects expressed herein. In particular, drafting the definition of QRM to be co-extensive with the definition of QM, implementing the "Ability to Repay" provisions of Dodd-Frank and eliminating the many additional non-statutory requirements that have been imposed on the meaning of QRM, would be a step in the right direction toward mitigating the negative effects of the proposed QRM definition.

Sincerely,

Todd Salmans,
President and CEO
PrimeLending, a PlainsCapital Company