July 27, 2011

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street, SW., Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2011-0002, RIN 1557-AD40

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn.: Elizabeth M. Murphy, Secretary
RIN 3235-AK96
Release No. 34-64148; File No. S7-14-11

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Jennifer J. Johnson, Secretary
Docket No. 2011-1411, RIN 7100-AD-70

Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attn.: Alfred M. Pollard, General Counsel
RIN 2590-AA43

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn.: Comments, Robert E. Feldman, Executive Secretary
RIN 3064-AD74

Department of Housing and Urban Development
Regulations Division
Office of General Counsel
451 7th Street, SW, Room 10276
Washington, DC 20410-0500
RIN 2501-AD53

Re: Credit Risk Retention Proposed Rule

To Whom It May Concern:

We are writing to address a concern shared by the undersigned and many other organizations around the country about the impact of the proposed QRM rules on affordable homeownership programs funded by local governments and non-profit organizations. In brief, the proposed rules exclude from the definition of QRM many home loans for borrowers that receive assistance through a government-funded or nonprofit affordable homeownership program. These are some of the safest loans for low- and moderate-income families and thus deserve to be included in the definition of QRM.

Overview

Like other housing stakeholders, we have serious concerns with a definition of QRM that excludes loans that are well-underwritten with safe mortgage products but happen to have a downpayment of less than 20 percent. Exclusion of these loans will force moderate-income homebuyers to pay a premium for being in a small and less liquid sub-market of non-QRM loans – in addition to the risk premium they will pay through mortgage insurance – and opens the door for similar standards to be adopted for FHA and loans backed by the GSEs or their successors. The ultimate risk is that the QRM definition becomes the standard for a “safe” loan and that all other loans, no matter how safe they actually are, are penalized by the market and regulators.

We share these concerns but also extend them in an important way. As currently written, the proposed QRM definition would exclude from the protection of QRM some of the safest available loans for low- and moderate-income homeowners – specifically, loans for homes made affordable through many publicly financed homeownership programs. This oversight should be addressed in the final rule to ensure that these important programs may continue to operate with good access to private financing.

The Importance and Safety of Government and Nonprofit Affordable Homeownership Programs

Thousands of public and nonprofit agencies across the country provide financial assistance to lower income homebuyers in order to help overcome affordability barriers to homeownership. These programs use a variety of financial structures to create affordability, including grants, loans and below market sales prices, but in each case public investment is used to reduce the size of a buyer’s first mortgage and bring monthly payments down to an affordable level.

Homeownership assistance programs play an essential role in helping low- and moderate-income families access the many benefits of sustainable homeownership, which include security of tenure, fixed housing costs that gradually free up more funds over time to meet other key family expenses, greater control over one’s physical environment, and the opportunity to build wealth through pay-down of principal and a modest level of home price appreciation. A growing body of research documents the importance of assets in helping individuals plan for the future and move forward in achieving their goals for themselves and their children. While homeownership is not for everyone, and we also support a robust and affordable rental sector, it is clear that safe, sustainable mortgages provide an essential route to asset accumulation for lower income households and thus merit public support.[1]

Unlike private second loans which increase the risk of homeowner default (though only slightly[2]), public and nonprofit purchase assistance programs ***significantly lower*** the buyer’s default risk. As shown by recent research:

- A survey[3] of Community Land Trust (CLT) programs found that just 0.46 percent of CLT mortgages at the end of 2010 were in the process of foreclosure, as compared to 4.63 percent of all mortgages in the Mortgage Bankers’ Association National Delinquency Survey, which includes prime, subprime, FHA and VA residential mortgage loans. The serious delinquency rate for CLT loans was 1.3 percent as opposed to 8.57 percent for loans in the MBA survey.

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[1] Thomas P. Boehm and Alan Schlottmann. (2008). "Wealth Accumulation and Homeownership: Evidence for Low-Income Households." Accessed 7/8/11 at http://www.huduser.org/portal/periodicals/cityscpe/vol10num2/index.html, pages 225-256.

[2] Center for Responsible Lending, et. al., *Proposed QRM Rule Hurts Creditworthy Borrowers and Housing Recovery,* April 13, 2011.

[3] National Community Land Trust Network, et. al., *The 2011 Comprehensive CLT Survey: Preliminary Report of Delinquency and Foreclosure Findings*, May, 15, 2011.

- An Urban Institute study in 2010 found that buyers that received assistance from affordable homeownership programs had default rates well below their local market average in spite of very low (or in some cases no) downpayment coming from the buyer's own funds[4]. As stated in the report: "Although homeowners earn well below median incomes, very few had residential loans that were in delinquency or foreclosure. . In every program but one, the site's foreclosure rates were below that of their surrounding areas as of 2009."

Application of the proposed QRM definition to affordable homeownership programs

There are generally three approaches to structuring affordable homeownership programs that provide financial assistance to lower income homebuyers in order to help overcome affordability barriers to homeownership. The QRM rule works as written for only one of the three:

1. - The assistance can be structured as a grant, in which case the family can use the grant to meet its downpayment requirement and the loan can be classified as a QRM if it meets other qualifications.

2. - The assistance can be structured as a second mortgage that is forgivable over time, repaid only upon sale of the home, repaid at a below-market-interest rate, or repaid on a deferred schedule. These structures all help preserve the value of public subsidy to help additional borrowers in the future, but in all cases the use of these sensible subsidy preservation mechanisms will result in the invalidation of the loan as a QRM.

3. - The assistance can be used to lower the purchase price with restrictions on resale prices designed to maintain affordability. Loans for such below-market homes could qualify for QRM but only if the borrower provides an additional 20% downpayment on top of the considerable public "equity" used to reduce the purchase price – an unrealistic requirement for the low- and moderate-income buyers targeted by such programs.

In many cases, subsidy providers are required by local, state or federal law to use one of the subsidy preservation mechanisms described above in categories #2 and 3. For example, HUD's HOME program requires local jurisdictions to use second mortgages or other restrictions to monitor affordability for different lengths of time depending on the level of assistance. 24 CFR 92.254.

The subsidy preservation mechanisms in categories 2 and 3 do not make the loans unsafe. Quite the opposite – they help preserve affordability for future buyers and thus ensure the efficient delivery of public and nonprofit subsidy that helps make these loans safer than many market-rate transactions. Accordingly, all three of the categories of affordable homeownership programs described above should appropriately be included among the category of "safest" loans that the QRM is intended to create.

[4] Urban Institute. *Balancing Affordability and Opportunity: An Evaluation of Affordable Homeownership Programs with Long-term Affordability Controls*, October 26, 2010.

Revising the QRM definition

We recommend two changes to the QRM definition to ensure that safe loans for homes subsidized through affordable homeownership programs qualify as a QRM:

1. - Ideally the final QRM definition would not include any reference to downpayment or LTV requirements. Removing this barrier would ensure fair access to ownership for low wealth buyers (with or without assistance) without significantly increasing systemic risks.

2. - However, in the event that the final QRM definition includes a downpayment percentage minimum (at any level), the definition should be written to ***specifically allow*** purchase assistance received from a public or nonprofit agency to count toward the QRM downpayment or LTV requirement. Specifically:

   a. - Where purchase assistance is structured as a loan, the loan should be allowed to count as "eligible downpayment assistance" so long as the buyer is not required to make any repayment for at least 5 years. In addition, second mortgages that carry any of the following features should be allowed under the QRM definition: no repayment until the home is sold; no repayment required for at least five years; repayment at an interest rate that is substantially below market; or a loan that is forgiven over time.

   b. - Where a public or nonprofit agency sells homes at a below market purchase price in order to assist targeted lower income buyers, the QRM should count this public "equity" (the difference between the sale price and the appraised market value) as "eligible downpayment assistance" in the same way as if the homeowner had received a grant or deferred payment loan for that amount.

Thank you very much for your consideration of our comments.

1000 Friends of Florida -
Atlanta Housing Association of Neighborhood-based Developers -
Atlanta Land Trust Collaborative -
Blaine County Housing Authority -
Borough of State College -
Centre County Housing and Land Trust -
Champlain Housing Trust -
Chester Community Improvement Project -
City of Lakes Community Land Trust -
Community Enterprise Investments Inc. of Pensacola, Florida -
Community Home Trust -
Community Land Trust of Greater Cleveland, Inc. -
Corporation for Enterprise Development -
Dallas City Homes -
Diamond State CLT -
Federation Of Long Island Community Land trusts, Inc.
First Homes

Florida Housing Coalition
Gallagher Consulting
Georgia State Trade Association of Non-profit Developers
Habitat for Humanity International
Habitat for Humanity of NYS
Homestead Community Land Trust
Housing Action Coalition-RI
Housing Development Fund, Inc.
Innovative Housing Institute
Institute for Community Economics
Island Housing Trust, West Tisbury, MA
Kulshan CLT
Marian Wolfe, Ph.D., Principal
Mercy Housing
Middle Keys Community Land Trust
Mission Mortgage of Texas, Inc.
National Association of Housing Cooperatives
National CLT Network
National Housing Conference
National Housing Trust
NCB Capital Impact
Northern Communities Land Trust
Oakland Community Land Trust
OPAL Community Land Trust
PeopleTrust, Austin, Texas
Pratt Area Community Council
Project for Pride in Living
Proud Ground
Sacramento Mutual Housing Association
The Connecticut Housing Coalition
The Tally Group, LLC
Two Rivers Community Land Trust
Upper Valley M. E. N. D.
Urban Land Conservancy
Vermont Housing and Conservation Board
Virginia Housing Development Authority
Wisconsin Partnership for Housing Development
Yolo Mutual Housing Association