National Reverse Mortgage Lenders Association
1400 16th Street, N.W.
Washington, DC 20036

August 1, 2011

regs.comments@federalreserve.gov
Jennifer Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Comments@FDIC.gov
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC, 20429
Attention: Comments, Robert E. Feldman, Executive Secretary

rulecomments@sec.gov
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

regs.comments@occ.treas.gov
Deputy of the Treasury
Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219

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

RegComments@fhfa.gov
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attention: Alfred M. Pollard, General Counsel

Re: Proposed Rule, Credit Risk Retention
Federal Reserve Docket No. R-1411;
OCC Docket No. 2011-0002;
FDIC RIN 3064-AD74;
SEC File No. S7-14-11;
FHFA RIN 2590-AA43; and
HUD Docket No. FR-5504-P-01

The National Reverse Mortgage Lenders Association (NRMLA) is the national voice of the reverse mortgage industry, serving as an educational resource, policy advocate and public affairs center for lenders and related professionals. NRMLA was established in 1997 to enhance the professionalism of the reverse mortgage business. Our mission is to educate consumers about the pros and cons of reverse mortgages, to train lenders to be sensitive to clients' needs, to enforce our Code of Conduct and Best Practices[1], and to promote reverse mortgages in the news media.

Introduction

Herein, NRMLA comments on the Credit Risk Retention Rule proposed by Office of the Comptroller of

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[1] http://www.nrmlaonline.org/nrmla/ethics/conduct.aspx

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), hereinafter, the "Agencies."

NRMLA requests that the Agencies create criteria under the Credit Risk Retention Rule for some reverse mortgages not insured by the Federal Housing Administration (FHA) to meet the definition of a qualified residential mortgage.

Reverse mortgages are an important financial alternative for a segment of our nation's home owning seniors. Currently, the reverse mortgage market is both heavily and overly dependent upon the FHA-insured HECM program. A return of the conventional reverse mortgage structured finance market is an important part of providing other alternatives and access to credit to those seniors wishing to consider a reverse mortgage loan. We believe requiring five (5%) percent risk retention on all reverse mortgages other than FHA-insured HECMs will unintentionally stifle the return of the conventional reverse mortgage structured finance market, thus constraining seniors' access to this important financial services tool. As discussed below, NRMLA also submitted comments to the Board regarding its Ability to Repay – Qualified Mortgage Rule (hereinafter "ATR-QM") asking it to create a definition of a reverse mortgage that meets the criteria of a "qualified mortgage", so that the Agencies also may create a definition that will allow certain reverse mortgages (other than merely FHA-insured HECMs) to qualify for an exemption from the risk retention requirements. We discuss below our views on the manner in which the Agencies also may create a definition that will allow certain reverse mortgages (other than merely FHA-insured HECMs) to qualify for an exemption from the risk retention requirements as a "qualified residential mortgage" so as to allow the quicker return of the conventional reverse mortgage structured finance market.

The Need for a Conventional Reverse Mortgage Market

The reverse mortgage market currently is comprised primarily of FHA-insured Home Equity Conversion Mortgage loans (or HECMs). This was not always the case. Based on information from our members, in 2006, conventional reverse mortgage securitizations reached approximately $1 billion. At the peak of reverse mortgage activity in 2007, conventional reverse mortgage were as much as 16% of the dollar volume of the reverse mortgage industry.[2] The conventional reverse mortgage securitization market showed robust signs of growth throughout the 2002-2007 timeframe, but receded parallel with the overall mortgage market's decline in the sale of mortgage backed securities. Our members report pent up demand for conventional reverse mortgage product, however, until a viable securitization market returns, access to conventional credit for this important financial services tool for seniors will be constrained.

Further, the FHA is subject to other pressures due to the current reliance on it by the broader mortgage market. Recently, to keep the HECM program viable, the principal limit factors of the HECM program were reduced,[3] and the annual mortgage insurance premiums increased from 0.50% to 1.25%,[4] thus lowering the proceeds available to seniors under the HECM program.

A return of the conventional market and additional reverse mortgage programs are needed to maintain access to credit and fill the need for this important financial services product for seniors. The return of the conventional reverse mortgage sector, we believe, will be unintentionally stymied if it is not possible for some reverse mortgages (other than FHA-insured HECMs) to meet the exception from the risk

[2] http://www.rminsight.net/investors-servicers/, last accessed July 21, 2011.
[3] *See* HUD Mortgagee Letter 2009-34 (Sept, 23, 2009).
[4] *See* HUD Mortgagee Letter 2010-28 (Sept, 1, 2010).

retention requirements afforded to qualified residential mortgages to be defined under the Risk Retention Rule yet to be finalized by the Agencies.[5] As outlined above, in our view, we believe the Agencies must create an exemption from the Risk Retention Rule for some reverse mortgages that meet an alternative definition of a qualified residential mortgage, based on similar grounds as we proposed for qualified mortgages under the ATR-QM in our comments to the Board.

Regulatory Discussion

Section 941 of the Dodd-Frank Act adds section 15G of the Exchange Act to create risk retention rules for sponsors of securitizations. Section 941 provides that the Agencies shall jointly issue regulations to exempt "qualified residential mortgages" from the risk retention requirements of section 15G. In defining the term "qualified residential mortgage", the Agencies shall define that term to be no broader than the definition "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Dodd-Frank Act.[6]

Section 1412 of the Dodd-Frank Act expands the ability to repay requirements already found in Regulation Z.[7] Section 1412 of the Dodd-Frank Act provides that, in the case of a reverse mortgage, except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements, a "qualified mortgage" means a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of subsection 129C(b)(2) of the Truth in Lending Act, as added by the Dodd-Frank Act.[8]

Thus, while the repayment ability provisions of TILA Section 129C(a) do not apply to reverse mortgages,[9] Section 1412 of the Dodd-Frank Act provides the Board with the authority to establish standards for reverse mortgages to meet the definition of a qualified mortgage.[10] While the ATR-QM proposal does not establish special conditions for reverse mortgages to be qualified mortgages, for the reasons outlined herein, we strongly believe that it should, and provided our comments to the Board stating such.

We believe the Agencies also must create a limited exception to the Risk Retention Rule for certain reverse mortgages (other than FHA-insured HECMs) in order to assure the return of a viable conventional market for non-FHA-insured reverse mortgages, which market must include and will be based primarily upon a conventional structured finance system.

As stated above, under section 941 of the Dodd-Frank Act, for purposes of the Risk Retention Rule, the Agencies shall define a "qualified residential mortgage" to be no broader than the definition "qualified mortgage" as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by

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[5] As provided under section 15G(e)(3)(B) of the Exchange Act, as added by 941 of the Dodd-Frank Act, FHA-insured loans, which would include HECM loans, are statutorily exempt from the risk retention rules under section15G, and the Agencies proposed Risk Retention Rules recognize this fact.

[6] Subsections 15G(e)(4)(A) and (C) of the Securities Exchange Act (15 U.S.C. 78a, *et seq.*), as added by Section 941 of the Dodd-Frank Act.

[7] *See* 12 C.F.R. § 226.35.

[8] TILA Section 129C(b)(2)(A)(ix), as added by the Dodd-Frank Act.

[9] *See* TILA Section 129C(a)(8)), as added by Section 1412 of the Dodd-Frank Act.

[10] TILA Section 129C(b)(2)(A)(ix), as added by the Dodd-Frank Act, authorizes the Board to define a ''qualified'' reverse mortgage that ''meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes'' of TILA Section 129C(b). Also, TILA Section 129C(b)(3)(B) authorizes the Board to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are (1) necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of Section 129C(b), or (2) necessary and appropriate to effectuate the purposes of Sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. *See* 76 Fed. Regis. 27390, 27472 (May 11, 2011).

the Dodd-Frank Act. In the proposed Risk Retention Rule, the Agencies state that reverse mortgages may be qualified mortgages only to the extent that they meet certain standards to be determined by regulation by the Board or the Bureau under section 129C(b)(2)(A)(ix) of TILA. The Agencies further state in the proposed Risk Retention Rule because the extent to which reverse mortgages may be considered a qualified mortgage under TILA is not yet known, the Agencies have excluded reverse mortgages from potential qualified residential mortgages status.[11] For this very reason, we addressed comments to the Board asking that it expressly recognize some reverse mortgages as qualified mortgages. We believe the Agencies also should create a limited class of non-FHA-insured reverse mortgages able to meet the definition of a "qualified residential mortgage" under the Risk Retention Rule.

Comment and Request

First, we mote that under section 941 of the Dodd-Frank Act a loan insured by the FHA, including HECMs, statutorily is not subject to the risk retention requirements as specified under the Dodd-Frank Act. [12]

We request that the Agencies create a limited class of non-FHA-insured reverse mortgages are deemed a "qualified residential mortgage" for purposes of Risk Retention Rule if such loans meets the following criteria:

- Requires mandatory counseling prior to origination,
- Contains an initial loan advance ratio of no greater than 60% of the initial collateral property value;
- Requires a financial assessment of the borrower according to procedures consistent with those to be established by HUD for the HECM program based on financial resources that are verified and documented, and taking into consideration applicable taxes, insurance and assessments affecting the collateral property,[13] and
- Carries no prepayment penalty.

We further note that because reverse mortgages are non-recourse, require no regular monthly repayment of principal or interest obligation, and investors agree at the outset to be repaid out of the value of the collateral only, regardless of the loan balance at maturity of the loan, reverse mortgage investors understand these risks, and issues such as the amount of a down payment, debt-to-income ratios, and a borrower's ability to repay the loan proceeds are not pertinent for reverse mortgages. Nonetheless, we believe there is a compelling need for the ability of a limited class of non-FHA-insured reverse mortgages to meet the definition of a "qualified residential mortgage" for purposes of Risk Retention Rule.

Conclusion

We trust that you will appreciate how important it is to the reverse mortgage industry that the Agencies are provided with some room to fashion a definition of a qualified residential mortgage under the Risk Retention Rule that includes certain reverse mortgages, as described above. We also urge you to consider the importance of reverse mortgages as an alternative for our nation's seniors and the compelling need for

[11] *See* 76 Fed. Regis. 24090, 24120 (April 29, 2011).

[12] Subsections 15G(e)(3)(B) of the Securities Exchange Act (15 U.S.C. 78a, *et seq.*), as added by Section 941 of the Dodd-Frank Act.

[13] We understand that HUD is currently drafting a proposal to implement a financial assessment review for senior loan applicants interested in a FHA-insured HECM loan. We understand such a proposal may take into account a senior's ability to pay for such items as property taxes and hazard insurance related to the collateral property securing a HECM, and that the proposal may be finalized later this year.

a quicker return of the conventional reverse mortgage structured finance market. We appreciate your favorable consideration of our comments.

Very truly yours,

Peter Bell
President
NRMLA

Cc: Steve Irwin, EVP, NRMLA
Bob Yeary, Co-Chair NRMLA Capital Markets Committee
David Fontanilla, Co-Chair NRMLA Capital Markets Committee
James A. Brodsky, Weiner Brodsky Sidman Kider PC, Outside General Counsel, NRMLA
Jim Milano, Weiner Brodsky Sidman Kider PC