National Fair Housing Alliance
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August 1, 2011

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Re: Docket No. OCC-2011-0022; RIN 1557-AD40
Regs.comments@occ.treas.gov

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1411; RIN 7100-AD70
Regs.comments@federalreserve.gov

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

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Re: File No. S-7-14-11; RIN 3235-AK96
Rule-comments@sec.gov

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

Re: RIN 2590-AA43
regcomments@fhfa.gov

Regulations Division
Office of the General Counsel
US Department of Housing & Urban Development
450 7th Street, SW, Room 10276
Washington, DC 20410-0500
Re: FR-5504-P-01
www.regulations.gov

Re: Credit Risk Retention Requirements and Qualified Residential Mortgage Standards

Dear Madam and Sirs:

On behalf of the National Fair Housing Alliance and its 220 members nationwide, I submit the following comments on the agencies' proposed credit risk retention requirements, and in particular, the proposed standards for Qualified Residential Mortgages (QRM), securitizations of which would be exempt from those risk retention requirements, as called for in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted one year ago.

Founded in 1988, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

We commend the agencies for their efforts to carry out the intentions of Congress, as enumerated in Dodd-Frank, to eliminate excessive risk in the mortgage market and in mortgage securitizations by realigning the interests of originators, securitizers and investors with those of borrowers. This section of the statute was intended to rebalance the interests of the parties to securitization in a safer and more equitable fashion, so that those who stand to profit from the transactions have an interest in ensuring that the underlying mortgages are safe, sound and sustainable. The misalignment of these interests in recent years drove the origination of high volumes of unsustainable mortgages: subprime hybrid ARMs, interest only mortgages, Option ARMs and the like, because they were highly profitable for brokers, originators, securitzers and investors, despite the fact that the borrowers could not sustain the loans over time.

We recognize that the liquidity in the mortgage market provided by securitizations has made mortgage credit more widely available than it would otherwise have been. When this liquidity supports safe and sustainable mortgages, it can expand access to affordable homeownership for American families, which can help those families build wealth that they can leverage to send their children to college, start or expand new businesses, rely on for retirement, and pass along to the next generation. However, when this liquidity supports unsafe and unsustainable mortgages, its impact is devastating for families, communities and the economy as a whole. The current crisis demonstrates with painful clarity the critical importance of aligning interests among all of the parties to mortgage securitization transactions, and to do so in a way that protects the interests of borrowers. Borrowers have the most at stake but also the least capacity to influence the terms of the deal or hedge against its risk. To the extent that the credit risk retention rules can help to bring about alignment for the borrowers' benefit and protection, they will promote greater economic stability for us all.

These proposed risk retention rules cannot come a moment too soon. We are all suffering the terrible consequences of the risky mortgage lending practices of recent years, as foreclosures have spiraled and home values have plummeted. Household wealth nationwide has dropped by $6 trillion since 2006.[1]

Communities of color have been devastated by these risky lending practices. Those communities were targeted for loans that were unsustainable and often predatory, and, as a result, homeowners of color face foreclosure at substantially higher rates than their white counterparts.[2]

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[1] Center for Responsible Lending Research Brief, "Big Bank Payday Loans," July 21, 2011.

[2] Center for Responsible Lending Research Report, "Foreclosures by Race and Ethnicity: The Demographics of a Crisis," June 18, 2010

The homeownership gaps between whites and people of color have gotten worse or remained stagnant, in spite of much rhetoric in recent years describing the increase in minority homeownership. These increases have been outpaced or matched by increases in white homeownership. For example, **the homeownership gap between whites and African-Americans has gotten worse.** The gap in 1940 was 22.8 percentage points, in 1960 was it 26.2 points, in 1995 it was 28, and in 2010 it was 28.5 percentage points.[3] **The homeownership gap between whites and Hispanics has improved by only two percentage points** from 28.9 in 1995 to 26.9 in 2010.[4]

Even those who have been able to hold onto to their homes have suffered financial losses. The amount of wealth drained from African-American and Latino communities due to the depreciation in values of property located near foreclosures has been estimated at $194 billion and $177 billion, respectively, for a combined total of over $371 billion.[5] These losses will have substantial, negative, long-term impacts on the financial security and well-being of families of color in the United States.

Families of color will soon constitute the majority of our country's population; thus, these negative impacts affect us all. We need to rebuild the road to sustainable homeownership, and to do so, we must rebalance our system for allocating capital for mortgage lending, so that it accurately assesses and manages risk and we re-align the interests of borrower, lender, securitizer and investor. This is just what the credit risk retention requirements are intended to do.

Dodd-Frank proposed an exemption from risk retention requirements for securities composed entirely of "Qualified Residential Mortgages." These are intended to be mortgages with product and underwriting features which historical loan performance data indicate result in a lower risk of default. The statute enumerates an illustrative list of such features, including for example loans that do not contain balloon payments, negative amortization, prepayment penalties, or interest-only payments. It also mentions verification of the income used to qualify the mortgagor, the borrower's

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[3] Leigh, Wilhemina and Huff, Danielle, "African Americans and Homeownership: Separate and Unequal, 1940 to 2006." Joint Center for Political and Economic Studies, Brief #1, November 2007 p.4; and "State of the Nation's Housing 2011," Joint Center for Housing Studies of Harvard University, p. 36.

[4] Ibid Joint Center for Housing Studies of Harvard University.

[5] Ibid Center For Responsible Lending Research Report.

residual income after satisfying all monthly obligations, the borrower's debt-to-income ratio (for both housing and other debts), product features and underwriting standards that mitigate the potential for payment shock on adjustable rate mortgages, and the presence of mortgage insurance or other credit enhancements, to the extent that they have been shown to reduce the likelihood of default.[6] **Notably, the statute does not mention down payment as one factor for use in defining QRM.** The agencies were tasked with crafting the final definition of QRM.

The concept of exempting securitization of the least risky mortgages from the risk retention requirements of Dodd-Frank was based on the recognition that those requirements are likely to lead to some increase in the cost of credit. While laudable in concept, this provision also poses tremendous risk to the ability of creditworthy borrowers to obtain mortgages at competitive market rates. This may occur if that the QRM rules come to be viewed by lenders, securitizers, investors, policymakers and regulators as the federal government's guidelines for safe and sound lending. Rather than distinguishing those loans that are the least risky and therefore not subject to risk retention, they may serve as underwriting standards and limit access to mortgage credit. This unintended consequence would be extremely detrimental to many middle class Americans, and to people of color and other protected classes in particular. In crafting the final rule, the agencies must strike a balance that discourages risky lending but does not shut the door to homeownership for many creditworthy borrowers.

Our comments focus on those aspects of the proposed rule that we believe may have the greatest adverse impact on the availability and affordability of mortgage credit for borrowers of color and other members of protected classes under the Fair Housing Act.

Eligibility Criteria

Problems with Use of FHA Handbook Definitions

For determining and verifying borrower funds and the borrower's housing debt, total monthly debt, and monthly gross income, the agencies have proposed to use the definitions and key terms established by HUD for purposes of the Federal Housing Administration (FHA) insurance. The FHA Handbook sets out different requirements

[6] See The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 11-203, Sec. 941(b)

for demonstrating the likelihood of continued income from government assistance programs, including disability income, as compared to employment income. For employment income, the handbook states that lenders "*must* analyze the income of each borrower who will be obligated for the mortgage debt to determine whether the borrower's income level can be reasonably expected to continue through at least the first three years of the mortgage loan." No standards are spelled out for making that determination, nor are borrowers with employment income required to provide written proof that the income will continue for any period of time.[7]

In contrast, for income from government assistance the Handbook states, "Income received from government assistance programs is acceptable for qualifying, ***as long as the paying agency provides documentation indicating that the income is expected to continue for at least three years.***" (Emphasis added.) [8] This requirement is a particular problem for borrowers who receive disability income from the Social Security Administration (SSA). While the SSA will verify that a borrower currently receives disability income, it will not provide documentation that the income is expected to continue for three years. This standard creates a barrier that may prevent otherwise qualified borrowers who receive disability income for qualifying for a mortgage under the QRM standard.

These different standards for proof of continued income from employment and government assistance, particularly disability income, are a cause for great concern and may be a violation of the federal Fair Housing Act. We urge the agencies not to adopt this aspect of the FHA Handbook for the QRM regulation. Further, we urge HUD to move quickly to amend this part of the Handbook.

Junior Liens

The proposed rule limits application of the QRM exemption to closed-end first-lien mortgages to purchase or refinance a one-to-four unit property, at least one unit of which is owner-occupied, and further restricts the exemption to first-lien loans for which no other liens exist, to the creditor's knowledge, at the time the loan is closed. In

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[7] (See http://www.fhaoutreach.gov/FHAHandbook/prod/infomap.asp?address=4155-1.4.D.2)

[8] (See http://www.fhaoutreach.gov/FHAHandbook/prod/infomap.asp?address=4155-1.4.E.3.c).

other words, mortgages with junior liens would not be eligible for the QRM exemption from the risk retention rules. The agencies' discussion of the proposed rule notes that historical data indicate that the presence of junior liens used to decrease down payments, often known as "piggy-back mortgages," significantly increased the likelihood of default.

The presence of such piggy-back mortgages was a common element of subprime lending so prevalent in communities of color in recent years, and it was a significant risk feature of such loans, in combination with such other features as high fees, pre-payment penalties, and interest rate increases that were frequent and uncapped after an initial fixed rate period. In this context, it seems appropriate to exclude loans with piggy-backs from the QRM exemption to the risk retention rules.

However, the proposed rule fails to acknowledge another class of junior liens which *do not* involve the same type of risk, *have not* been combined with other risk features, and *have not* demonstrated the same historical level of default. These are junior liens made through programs administered by state housing finance agencies or similar public or quasi-public agencies, which have helped thousands of borrowers of modest income become successful homeowners. These programs, aimed at first-time homebuyers, combine careful underwriting, verification of the borrower's income, features to prevent payment shock, and often pre- and sometimes post-purchase counseling. The assistance they provide for down payments and closing costs, or otherwise to reduce the cost of the loan, have made it possible for people whose income could support a mortgage but whose assets could not cover down payment and closing costs, to achieve homeownership. Unlike the so-called "piggy-back" loans, mortgages made through these programs have an excellent record of performance, even in times of economic stress.

One example of such a program is the SoftSecond program in Massachusetts, administered by the Massachusetts Housing Partnership, a quasi-public agency. The SoftSecond program provides eligible buyers with a conventional first mortgage and a "soft" second mortgage, both of which are funded by the bank, along with a modest public subsidy. More than 15,000 first-time homebuyers in Massachusetts have purchased homes through the program. It has disproportionately served borrowers of color – African-American, Latino and Asian - and female heads of household. Although borrowers using the SoftSecond program have incomes that average 60% of the median income in their areas, the delinquency rate for these loans is lower than the statewide average. The foreclosure rate for SoftSecond loans is 1.01 percent, compared to an overall statewide foreclosure rate of 3.10 percent.[9]

The Massachusetts SoftSecond program and others like it around the country demonstrate that when combined with appropriate underwriting, pricing, structuring and borrower support, junior liens can provide a path to sustainable homeownership for those who might otherwise be ineligible, while performing extremely well, even in times of economic stress. We urge the agencies to allow such programs to qualify under the QRM definition.

Down Payment

In addition to the factors suggested in the Dodd-Frank statute as indicators of a Qualified Residential Mortgage, the agencies are proposing to include a requirement that QRM loans have a down payment of 20%, or in the alternative, 10%. We strongly oppose this proposal, and urge the agencies to eliminate it from the final rule. Down payment size is not a strong indicator of loan performance, its use in the QRM definition was considered and rejected by Congress, and it may have a tremendous negative impact on the ability of borrowers of color and members of other classes protected under the Fair Housing Act to become homeowners or to refinance existing mortgage loans. Further, if down payment is used as an element of the QRM definition, it may well become the de facto government standard for mortgage underwriting and be adopted much more widely, which is not the intention of the QRM provision of Dodd-Frank.

Considerable evidence indicates that the size of the down payment is not a key factor in determining loan performance. This is not to say that there is no relationship between down payment and performance, but rather that as an isolated factor it is not a good indicator and that its impact on risk can be readily predicted and managed. In the current crisis, the layering of risk – with such features as rapidly increasing interest rates and monthly payments, pre-payment penalties, negative amortization, lax

[9] Cox, Prentiss and Thomas Callahan, "Keeping the Baby, if Not the Bathwater: Learning the Right Lessons from the Subprime Crisis," Communities & Banking, Federal Reserve Bank of Boston, Summer 2011.

underwriting, and poor servicing – in combination with falling house prices is what has led to widespread defaults.

Take, for example, a portfolio of loans originated in 2006 and 2007 and insured by MGIC, a private mortgage insurance company. These loans were fully documented and fully underwritten purchase or rate/term refinance loans for owner-occupied properties with borrowers who had prime credit (a FICO score of 660 or higher) and a debt-to-income ratio of 45% or less. The loans were 30 year, fully amortizing, fixed-rate mortgages. The foreclosure rate for loans in this group with a 20% down payment is 1.3%. For loans with a 15% down payment, the foreclosure rate is 2.4%. For loans with a 10% down payment, the rate is 3.3%, for loans with a 5% down payment the rate is 4.0%, and for loans with a 3% down payment, the rate is 4.7%[10]. All of these foreclosure rates are far below the double-digit rates seen on loans with multiple layers of risk, such as subprime hybrid ARMs with high points and fees, pre-payment penalties, lax underwriting and poor servicing.

Analysis of the factors contributing to loan performance shows that size of down payment is not a leading indicator of risk. According to MGIC, when all other factors are held constant, loans with negative amortization are three to four times more likely to default, those with reduced documentation are three times more likely to default, loans to borrowers with credit scores below 660 are two to three times more likely to default, and loans to investors are two to three times more likely to default. These are the features most closely associated with default risk, not down payment.[11]

On the other hand, including down payment in the QRM standards will create a bar to access to affordable mortgages for many families in America, particularly families of color. While it has minimal impact on loan performance, down payment is effectively a measure of wealth, and there is an enormous – and growing – wealth gap based on race and national origin in this country. This raises grave fair housing concerns about the use of a wealth-based measure as a standard for access to the most affordable, and likely most available, mortgage credit, when there are other, more effective measures that do not have the same negative impact based on race and ethnicity.

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[10] Zandi, Mark, "The Skinny on Skin in the Game," Moody's Analytics, March 8, 2011.
[11] Ibid.

A recent study by the Pew Research Center looks at the ratio of wealth held by white households compared to black and Hispanic households in the United States from 1984 up to 2009, the most recent year for which these particular data were available. In 1984, the median household wealth for white households was 12 times greater than the median wealth of black households, and eight times greater than that of Hispanic households. This wealth disparity reached its lowest point in 1995. In that year, the median wealth for white households was seven times greater than that of both black and Hispanic households. However, since the Great Recession, the disparity has increased enormously, a reflection of the extent to which the recession has had the biggest impact on families of color. In 2009, the median household wealth for white households was 20 times greater than that of black households, and 16 times greater than that of Hispanic households.[12]

In practical terms, this disparity in wealth makes it more difficult for households of color to come up with the 20% down payment contemplated in the proposed rule. According to the National Association of Realtors, the median house price in the US in 2010 was $172,900. A 20% down payment for a house of this price would be $34,580. If one assumes an additional 5% in closing costs, the cash required to purchase a house at the median price would be $43,225. The average American household would have to save at an annual rate of 7.5% for more than 14 years to accumulate enough cash for such a purchase, and that assumes that all of their savings are for home purchase, and none for retirement, college or other purposes.

For households of color, the timeframes are much longer. Based on 2009 median household incomes, Hispanic households would have to save for 19 years to accumulate a 20% down payment and closing costs for a median-priced house, and African-American households would have to save for 22 years. These timeframes – which are based on the assumption that households save only for home purchase and no other contingencies - are simply unrealistic. The 20% down payment requirement would make access to Qualified Residential Mortgages out of reach for many households of color.

Cost of Non-QRM Loans

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[12] Taylor, Paul, Rakesh Kochhar, Richard Fry, Gabriel Velasco and Seth Motel, " Twenty to One: Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics," Pew Research Center, July 26, 20011.

The agencies have communicated their belief that a QRM regulation that exempts a very narrow slice of the market from the risk retention rules will ensure a robust and competitive market for non-QRM loans, promoting liquidity and affordability for these mortgages. We do not have confidence in this outcome.

There are a number of components to the cost of non-QRM loans. These include the actual cost of the 5% risk retention requirement, the costs resulting from the smaller number of market participants who are large enough to retain that 5% risk, and the costs of the stigma associated with making non-QRM loans. One might think of this last component as the kind of opportunistic pricing that has been at work in communities of color for years, or charging what the market will bear to consumers who may not believe they have other choices.[13]

The National Association of Realtors has estimated the additional cost for non-QRM mortgages at anywhere between 80 and 185 basis points.[14] Mark Zandi, of Moody's, has put the increased cost at 75 to 100 basis points.[15] According to the National Association of Homebuilders, every 1% increase in interest rates makes the median priced home unaffordable for 4 million households.[16] Given the wealth disparities in the US, it is likely that a great many of these would be households of color.

Possible Alternative Approach

The agencies have requested comment on a possible alternative approach that would use a 10% down payment as part of the QRM standard. We oppose this approach. The arguments for excluding down payment from QRM apply to any size down payment. Further, because a smaller down payment would eliminate fewer potential homebuyers from qualifying for a mortgage, it would run the risk of being viewed as the government-approved standard for all mortgage lending. Rather than being the

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[13] For example, the Wall Street Journal estimated that over 60% of subprime borrowers had credit scores that qualified them for cheaper, less risky prime mortgages.

[14] Coalition for Sensible Housing Policy, "Proposed Qualified Residential Mortgage Definition Harms Creditworthy Borrowers While Frustrating Housing Recovery," available at www.sensiblehousingpolicy.org, July 11, 2011, p. 8.

[15] Zandi, Mark and Cristian deRitis, "Reworking Risk Retention," Moody's Analytics Special Report, June 20, 2011.

[16] Coalition for Sensible Housing Policy, op. cit., p. 8.

demarcation line for risk retention, it may become a bright line in for underwriting purposes. Despite evidence that low down payment lending can be done safely and responsibly, the notion of increasing down payment requirements is already being discussed for FHA loans and for loans guaranteed by Fannie Mae and Freddie Mac. Adopting it as part of the QRM standard would only add weight to the fallacy that this is the best shorthand approach to safe lending, and encourage its adoption throughout the market. This is not the outcome Congress intended from the QRM rule, and it would have a tremendous dampening effect on the housing market overall, and on borrowers of color in particular.

Credit History

The proposed rule seeks to account for the borrower's credit history without making use of any individual credit scoring system. It does so by requiring that the borrower not be 30 days past due, in whole or in part, on any debt obligation; that the borrower had not been 60 days or more past due on any debt obligation within the previous 24 months; and that within the past 36 months the borrower had not been a debtor in a bankruptcy proceeding, had not been foreclosed upon, engaged in a short sale or deed-in-lieu of foreclosure or subject to a federal or state judgment for collection of any unpaid debt.

We applaud the agencies' decision not to use any credit scoring system as one of the elements of the QRM definition, both for the reasons cited in the Notice of Proposed Rulemaking and for other reasons. However, we believe that the credit standards that have been proposed are too stringent, particularly in light of the widespread abuses that have occurred in the mortgage market in recent years. Too many borrowers have been unfairly steered into unsustainable loans when they should have qualified for lower priced products that did not contain risky features. Too many others were put in loans that were never sustainable and should never have been made. This problem is amply illustrated by the recent enforcement action taken against Wells Fargo by the Federal Reserve Board. In addition to an $85 million fine, the largest civil money penalty ever imposed by the Board in a consumer protection enforcement action, it entered into a consent decree that resolves allegations that " Wells Fargo Financial employees steered potential prime borrowers into more costly subprime loans and separately falsified income information in mortgage applications."[17] The Board estimates that more than 10,000 consumers may have been affected by these actions of Wells Fargo.

Consumers, such as those at issue in the Wells Fargo case and many others, have suffered tremendous financial stress. They were given loans that were unsustainable, and as a result they experienced delinquencies, defaults, foreclosures, short sales and deeds-in-lieu of foreclosure, and bankruptcies. The lesson we should learn from these experiences is that risky loan products and practices cause widespread credit problems for borrowers. Evidence suggests that those same borrowers, put in a fair and sustainable product that was fully documented and well underwritten, would pay their loans on time.[18] The problem was the loan product, not the borrower.

Many other borrowers have found themselves squeezed by the dual forces of un- or under-employment and falling house prices. Because the value of their homes has declined, they are unable to refinance to take advantage of lower rates and obtain lower mortgage payments, they are unable to tap their equity to carry them through their period of financial stress, and they are unable to sell their homes to prevent foreclosure or move to seek employment. These borrowers, subject to economic forces far beyond their control, are also experiencing difficulty paying bills on time, and in too many cases, foreclosure and bankruptcy. Borrowers who were subject to abusive loan practices and those caught in the squeeze of the recession, the borrowers are often people of color, who were heavily affected by both of these phenomena.

The credit standards proposed by the agencies for QRM are overly restrictive, fail to consider adequately the widespread impact of abusive lending practices and the recession, and are likely to have a disproportionate impact on borrowers of color. We urge the agencies to adopt more flexible standards in the final rule.

Payment Terms

The proposed rule excludes from eligibility for QRM status loans with a variety of features that are viewed as risky. These include interest only loans, loans with negative

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[17] See July 20, 2011 press release from the Federal Reserve Board, available at http://www.federalreserve.gov/newsevents/press/enforcement/20110720a.htm.

[18] See, for example, (Risky Loans or Risky Borrowers, UNC) NEED FULL CITE

amortization, balloon payments or pre-payment penalties. For adjustable rate mortgage to qualify, they must have a 2% annual and 6% lifetime cap on the amount by which the rate can increase.

These features reflect precisely those loan characteristics that have proven to be the biggest contributors to risk, and we fully support their inclusion in the QRM rule.

Loan-to-Value Ratio

For refinance loans, the agencies have proposed a maximum combined loan-to-value ratio of 75% for rate and term refinance loans and 70% for cash-out refinance loans. In other words, a homeowner would need to have equity in their homes equal to 25% or 30%, respectively, of the home's market value. This standard would have the effect of preventing millions of homeowners from refinancing to take advantage of lower interest rates or tapping the equity in their homes to send their children to college, start or expand a business, cover medical expenses or many other important purposes. Nationwide, 57% of homeowners have less than 30% equity in their homes, and 52% have less than 25% equity. In states hardest hit by the foreclosure crisis and falling home prices, the figures are even higher. For example, in Florida, 70% of homeowners have less than 30% equity, and 66% have less than 25% equity. We urge the agencies to use an approach to the QRM standard for refinance loans that does not disqualify such a broad segment of the homeownership market.

Default Mitigation

The agencies have proposed to incorporate certain requirements with respect to default mitigation policies and procedure into the standards for a QRM. We fully support the inclusion of default mitigation into QRM. Failures of servicing have been a major contributor to the losses – for both homeowners and investors – experienced in the current crisis. In some cases, the actions of servicers have precipitated default and foreclosure, such as the misapplication of payments, and the improper use of force-placed insurance. In other cases, excessive fees, lengthy delays, inadequate communications and conflicts of interest that encourage servicers to seek outcomes that may not be in the best interest of either borrower or investor have increased the cost to borrowers and led to avoidable foreclosures. Any effort to provide for greater stability in either the mortgage market or the securitization market in the future must address servicing, and we commend the agencies for doing so here.

The question of national standards for mortgage servicing has arisen in a number of policy contexts, as acknowledged by the agencies. We believe it is extremely important to craft a rigorous set of standards that will ensure future mortgage servicing responds to delinquencies and defaults, particularly when they are widespread, much more effectively and equitably than has been the case recently.

The proposed rule addresses many of the key components of servicing. There are a few areas where we would suggest additional requirements. Perhaps the most important of these is the conflict of interest that exists when a servicer services a first lien on behalf of an investor and a second lien on the same property on its own behalf. The current crisis illustrates the disincentive this creates for the servicer to move expeditiously and aggressively to mitigate against default on the first lien, particularly when the second is still performing. The proposed rule requires creditors to establish policies and procedures that would provide for default mitigation on the first lien (QRM) when it becomes 90 days or more past due and to disclose those policies and procedures to investors. We believe this approach does not go far enough to eliminate the conflict of interest many servicers have faced. A more effective approach would be to prohibit servicing of the QRM to be by any servicer that holds a junior lien on the property securing the QRM.

The proposed rule requires creditors to have policies and procedures requiring prompt initiation of default mitigation activities for a QRM loan within 90 days after the loan becomes delinquent. We urge the agencies to adopt a more aggressive timeframe. The creditors' policies and procedures should encourage servicer contact with borrowers immediately upon delinquency (i.e., when the loan becomes 30 days past due), and should require servicers to review delinquent loans for imminent risk of default. In cases where the review indicates such risk exists, the servicer should immediately begin working with the borrower to avoid default. Never again should delinquent borrowers be told that their servicer cannot help them until they have actually defaulted.

In addition, we encourage the agencies to incorporate into the regulations a requirement that the servicing policies and procedures for QRM loans spell out the range of default mitigation options that should be evaluated and offered when they yield a positive net present value. These include restructuring of the loan, principal reduction, interest rate reduction, and term extension. The certainty provided by having a consistent set of options available to all QRM borrowers would prevent much of the confusion, conflict, delay and expense that has been experienced by troubled mortgage borrowers in recent years.

Thank you for the opportunity to comment on the proposed QRM standards. Please contact Debby Goldberg at 202-898-1661 or dgoldberg@nationalfairhousing.org with any comments or questions.

Sincerely,

Shanna L. Smith
President and CEO