PulteGroup

August 1, 2011

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Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 2055

Elizabeth F. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
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Acting Comptroller of the Currency
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General Counsel
Department of Housing and Urban Development
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Re: Credit Risk Retention Proposed Rule; OCC Docket Number OCC-2011-0002; Federal Reserve Docket Number R-1411; FDIC RI?N 3064-AD&$; SEC File Number S&-14-11; FHFA RIN 2590-AA43; HUD Docket Number FR-5504-P-01

Dear Sir or Madam:

We are pleased to submit this comment letter on behalf of PulteGroup, Inc. ("PulteGroup") and its wholly-owned lending subsidiary, Pulte Mortgage LLC with respect to the proposed rule on credit risk retention and the definition of a "Qualified Residential Mortgage," which was jointly issued by several agencies ("Agencies") of the United States, pursuant to Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank).[1]

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[1] Richard J. Dugas, Jr., has served as President and Chief Executive Officer of PulteGroup, Inc. since July 2003, and as Chairman since August 2009. Dugas has more than 17 years of homebuilding industry experience, having served Pulte Homes in regional and market leadership positions ranging from Process

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I. <u>Background.</u>

PulteGroup is the nation's largest and most geographically diverse homebuilder, selling homes under the Pulte, Centex and Del Webb brands, with operations in 29 states, plus the District of Columbia. During its more than 60-year history, PulteGroup has delivered about 500,000 homes to a wide range of homebuyers, including first-time, move up and active adult buyers. In fact, under its Del Webb brand, PulteGroup is the largest builder of active adult communities for people 55 and older.

PulteGroup is well-known throughout the industry, not just for its size and history, but also for its commitment to customer satisfaction in its building, lending and title services businesses. Since 2000, PulteGroup's operations have earned more top-three finishes than any other homebuilder in the annual J.D. Power and Associates New Homebuilder Customer Satisfaction Study. PulteGroup employs nearly 4,000 individuals in its homebuilding, mortgage lending and title services operations.

II. <u>Comments</u>

The proposed rule carries out a mandate under Dodd-Frank to require entities that sponsor mortgage-backed securities ("MBS") to retain 5 percent of the credit risk of the securitization. It also creates an exemption from this risk retention requirement for securitizations backed 100 percent by "Qualified Residential Mortgages" ("QRMs").

The proposed rule is extensive, posing more than 174 questions for public response. PulteGroup has elected to focus on the QRM definition, which presents the greatest risk to the availability of credit for deserving borrowers. While PulteGroup appreciates the carve-out for loans meeting the QRM definition, the rule as written is too narrow, goes beyond the spirit of the enabling legislation, would hurt consumers and affect housing market liquidity.

Unfortunately, the proposed QRM definition would place homeownership out of reach for many well-qualified buyers and make it more expensive for millions more. The QRM definition is overly restrictive and thereby excludes mortgages that would otherwise be at low risk of default.

PulteGroup appreciates the importance of creating a robust private mortgage-backed securities ("MBS") market. However, the proposed hard and fast rule requiring 20 percent down payments on purchase money mortgages, 28 percent front and 36 percent

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Improvement Vice President in the Company's Atlanta operations to Atlanta Division president to Coastal Region President responsible for the Company's expansive southeast operations. Prior to his appointment as CEO, Dugas was Executive Vice President and Chief Operating Officer of the Company.

Since 2004, Debra W. Still has held the position of President and Chief Executive Officer of Pulte Mortgage LLC where she oversees the mortgage and title operations. She has 35 years of experience in the residential mortgage industry, the last 28 of which have been with Pulte Mortgage. She has been a member of the Fannie Mae and Freddie Mac National Advisory Councils. She was the 2010 Chair of the Mortgage Bankers Association's (MBA) Residential Board of Governors (RESBOG), and currently serves as Vice Chairman of the Mortgage Bankers Association and as a member of MBA's Board of Directors.

back ratios, and specific credit history standards, would end up further weakening the housing market and thereby also damage an opportunity to re-invigorate the private MBS market. PulteGroup believes that a better approach to the QRM rule would be to await the issuance of the "ability to repay" and "Qualified Mortgage" ("QM") standards that are currently being developed by the Consumer Financial Protection Bureau ("CFPB"). Once the QM definition is issued, the Agencies may align the QRM definition with the QM rules to provide a consistent, manageable QRM standard.

A. The Agencies Should Await a Final QM Definition Before Finalizing the QRM Definition.

Dodd-Frank requires that the QRM definition "be no broader than the definition of 'qualified mortgage.'" Dodd-Frank charges the CFPB with defining a "Qualified Mortgage" ("QM") as part of its "ability to repay" rulemaking under the Truth in Lending Act. Accordingly, Congress has charged that the QRM definition is to be co-equal or a subset in scope of the QM definition. Given Congress' mandate, the Agencies should await the finalization of the QM definition in order to ensure that its QRM definition is properly aligned with the QM rule. Otherwise, the Agencies risk violating this requirement or, in an over-abundance of caution, setting an inconsistent or over-restrictive QRM standard.

B. The Proposed Loan-to-Value and Down Payment Requirements Are Too Onerous to Consumers.

The proposed QRM definition would impose a 20 percent down-payment on purchase money mortgages, a 25 percent down payment on rate and term refinances and a 30 percent down payment requirement on cash-out refinances. While a reasonable and affordable cash investment in a home may be warranted, the 20 percent down payment requirement on a purchase money mortgage is clearly over-restrictive.

An analysis by the Mortgage Bankers Association estimates that it could take moderate income Americans 18 to 20 years to save for a 20 percent down payment on a moderately priced home. Borrowers must also pay closing costs, which may add another one to 10 percent of the house price (depending on the market) to the amount they must save.

Similarly, responsible borrowers who have made timely payments, yet have little equity due to declining prices, would not be able to refinance to take advantage of lower rates. This is due to the QRM proposal's imposition of a 75 percent threshold for rate and term refinancing. Since rate and term refinancings often reduce the interest rate and/or monthly payments by borrowers, the LTV threshold should be the same as that for purchase money mortgages.

Sound underwriting is a much better control for default risk than hard down-payment requirements. PulteGroup therefore believes that the QRM definition should not include a down-payment requirement or, that it should, at most, incorporate a requirement consistent with FHA underwriting standards.

C. Debt-to-Income Ratios Should Be Verified, But Not Overly Restrictive.

The proposed QRM rule would impose 28 and 36 percent debt-to-income (DTI) standards for front and back ratios. These highly restrictive ratios are likely to affect millions of potential homebuyers, driving their borrowing costs up or pushing them out of the housing market entirely.

Lenders should be required to verify a borrower's income, debt, assets and employment and to employ sound underwriting standards in order to meet the QRM standard. The QRM rule, however, should not impose arbitrary, hard stops on DTI ratios. Lenders should be able to consider sound underwriting criteria that allow for compensating factors to minimize default risk. The flexibility to consider compensating factors is absolutely necessary to preserve lower and middle income consumers' access to favorable credit terms. Accordingly, the DTI requirements should be eliminated from the QRM definition.

D. Credit History Requirements Should Incorporate Widely Accepted Underwriting Standards.

The proposed QRM rule disqualifies many consumers based on potentially minor credit events. This requirement may disproportionately penalize many consumers who otherwise would be very good credit risks. A better approach would be to require lenders to consider and verify consumers' credit history using widely accepted underwriting standards – such as those required of FHA or VA loans – in order to meet the QRM definition. For these reasons, specific credit history requirements should not be an element of the QRM definition.

E. The Three Percent Limit on "Points and Fees" Should be Removed from the QRM Rule and Instead Implemented by the CFPB as Part of the "Ability to Repay" QM Rulemaking.

The proposed QRM rule limits "points and fees" payable by the borrower to three percent of the total loan amount. This provision mimics that of the QM definition in TILA, as amended by Dodd-Frank. This provision, however, is unnecessary, because the QM rule will apply to all loans that could be QRMs, since only QMs can be QRMs.

The proposed QRM "points and fees" definition is more restrictive than that under the proposed QM rule. QRM does not adjust for small loans. It does not allow for the exclusion of bona fide discount points. The Agencies simply imposed these additional restrictions without explanation or justification.

The QRM "points and fees" definition should not arbitrarily exclude loans made to highly qualified borrowers who seek small loans or to reduce their monthly payments through the payment of upfront discount points. Neither of these characteristics bear any relationship to default risk. Moreover, the imposition of different "points and fees" tests under both QM and QRM will increase lender compliance costs (and thus consumer costs) without any demonstrated benefits to consumers or reducing default risk.

Moreover, any "points and fees" definition should treat affiliate title fees the same as non-affiliate title fees. As currently drafted, the QM and QRM definition would impose special treatment for affiliate title fees, which is inconsistent with the purpose of Dodd-Frank, would hurt consumers and would inflict yet another wound on the weak residential real estate market. Specifically, the proposed QM definition includes affiliate title fees in the three percent "points and fees" threshold test for a QM, whereas fees of non-affiliate title providers are not included. The QM definition discriminates against these affiliate title and mortgage companies, who would be subject to the stricter QM test, without any rational basis, and would include them in the "points and fees" calculation even if the affiliate title providers charged the same – or even lower – fees than non-affiliate providers. In fact, in the vast majority of states title insurance rates are set and/or approved by the state insurance regulator as "filed rates" and title insurers do not have the discretion to negotiate or adjust their premiums.

The harm to consumers from the failure to exclude affiliate title services charges from the "points and fees" definition is clear. Yet, the Federal Reserve Board suggested that it reached its decision to include these charges because Congress "appears to have rejected" the exclusion of affiliate title services charges from the "points and fees" threshold. The Board also has invited comment on why excluding such charges "would be consistent with the purposes of the statute." The Board retains the discretion under Dodd-Frank to revise the QM definition "upon a finding that such regulations are necessary and proper to ensure that responsible, affordable, mortgage credit remains available to consumers." Because the inclusion of affiliate title-services fees in the "points and fees" calculation would damage the availability of affordable, responsible mortgage credit, PulteGroup believes that this provision should be changed.

Inevitably, such a regulation would force many enterprises with both mortgage and title operations to contemplate exiting either the mortgage or title business in light of the obvious competitive disadvantage with non-affiliated mortgage and/or title companies whose title-services fees would not.be included in the QM calculation. The QM definition could force affiliated enterprises to make tough choices as to which businesses to keep – mortgage or title -- reducing competition for consumer businesses, destroying efficiencies among affiliate providers and raising costs for consumers.

The predicable result of the proposed rule thus would be reduced competition, decreased lending options and increased costs A greater concentration of the mortgage business would migrate to massive "too big to fail" banks. Title services businesses would further concentrate among the handful of nationwide title insurers and their affiliate closing companies. By reducing competition, the QM definition inevitably would hurt consumers, raise homebuyer, financing and closing costs and reduce homebuyers' choices for mortgage and title services.

The proposed QM and QRM "points and fees" definition therefore should treat affiliate title fees in exactly the same manner as the fees of non-affiliate title companies and title insurers, by excluding affiliate title fees from the "points and fees" definition.

Additional Issues.

PulteGroup provides the following additional comments relating to other elements of the rule:

- The requirements relating to the Premium Capture Cash Reserve Account should be eliminated as it will force consumers to pay additional points and fees at closing and restrict the flexibility of lenders to structure financing to meet consumer needs.
- PulteGroup supports allowing risk retention requirements relating to a particular securitization to "sunset" after no longer than five years.
- PulteGroup also supports allowing the blending of QRM and non-QRM loans in the same securitization, with risk retention apportioned appropriately. This would allow for minimal impairment to market liquidity.

III. Conclusion

On behalf of PulteGroup, Inc and its affiliate lender, Pulte Mortgage LLC, we appreciate the opportunity to comment on the Agencies' propose risk retention rule and the "Qualified Residential Mortgage" definition. PulteGroup, as always, is ready to work with the Agencies in their efforts to improve the efficiency, safety and fairness of the residential real estate and lending markets.

Respectfully,

Richard J. Dugas
Chairman, President and Chief Executive Officer
PulteGroup, Inc.

Debra W. Still
President and Chief Executive Officer
Pulte Mortgage LLC