American Bankers Association
Building Success. Together.

Robert R. Davis
Executive Vice President
Mortgage Markets, Financial
Management & Public Policy
(202) 663-5588
RDavis@aba.com

October 30, 2013

Honorable Ben S. Bernanke
Chairman
Board of Governors of the
Federal Reserve System
Washington, DC 20551
Re: Docket No. R-1411

Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
Washington, DC 20429
Re: RIN 3064-AD74

Mr. Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
Washington, DC 20552
Re: RIN 2590-AA43

Honorable Mary Jo White
Chair
Securities and Exchange Commission
Washington, DC 20549
Re: File Number S7-14-11

Honorable Shaun Donovan
Secretary
Department of Housing
and Urban Development
Washington, DC 20410
Re: RIN 2501-AD-53

Mr. Thomas J. Curry
Comptroller
Office of the Comptroller of the Currency
Washington, DC 20219
Re: Docket No. OCC-2013-0010

Re: ***Credit Risk Retention Proposed Rule***

Transmitted electronically to www.regulations.gov regarding:

- OCC: (Docket No. OCC-2013-0010)
- Federal Reserve: (Docket No. R-1411)
- FDIC: (RIN 3064-AD74)
- SEC: (File Number S7-14-11)
- FHFA: (RIN 2590-AA43)
- HUD: (RIN 2501-AD-53)

Dear Sirs and Madam;

The American Bankers Association (ABA) is pleased to submit the following comments with regard to the Qualified Residential Mortgage (QRM) provisions included in the above referenced proposed rule.

ABA is also a member of the Coalition for Sensible Housing Policy and is joining in the comments submitted by that Coalition and has joined with the Securities Industry and Financial Markets Association (SIFMA) and the Financial Services Roundtable (FSR) to comment on QRM and a number of other credit risk retention issues.

In addition to the comments filed by the Coalition for Sensible Housing Policy and jointly with SIFMA and FSR, ABA wishes to highlight the specific following points with regard to QRM.

QRM should coincide with QM

The ABA strongly supports the Agencies' rule on QRM as re-proposed. It is a vast improvement over the earlier proposal which was unworkable and certain to lead to a severe constriction of available mortgage credit to otherwise creditworthy borrowers who could not meet the earlier proposal's extreme and rigid down payment requirements.

In comments submitted in response to the earlier proposal, ABA urged you to reconsider the approach taken, and to instead adopt a standard which would allow QRM to be coincident with the Qualified Mortgage (QM) rule that is to be implemented in 2014 by the Consumer Financial Protection Bureau (CFPB). Our earlier comment letter of August 1, 2011, can be found on www.aba.com.[1]

As we indicated in our previous letter, the standards set in the QM proposal are far superior in many aspects to the originally proposed QRM. The QM proposal provides underwriting discretion to loan originators while the original QRM proposal left originators little discretion. Where the QM proposal requires originators to establish and document a borrower's ability to repay using a range of measurements – including debt-to-income ratios, and employment status and history, the original QRM rule used a hard and fast formulation – including a minimum 20 percent down payment, strict debt-to-income ratios, and severe and narrowly defined credit history restrictions. The original QRM approach replaced traditional underwriting with a strict formula which could potentially result in perverse outcomes where borrowers who are a poor credit risk nevertheless qualify for QRM status while others who are good credit risks cannot qualify.

QRM=QM is a much better approach. Under the approach adopted by the CFPB for QM loans, lenders are required to engage in prudent underwriting practices and eliminate higher risk features, such as negative amortization and interest-only payments. As a result, loans meeting the QM definition will be well-underwritten, safe and sound, high-quality loans. Under the statute, QRM cannot be broader than QM. It makes little sense to define QRM more narrowly or to add further requirements such as the narrow and burdensome credit history requirements included in the original proposal. Such requirements would reduce credit availability for qualified borrowers. It would also add significant costs to loan origination and ultimately make loans more expensive for consumers. Such requirements would only have harmed otherwise credit worthy borrowers by making loans more expensive and unnecessarily harder to obtain. In short, defining QRM as co-incident with QM ensures that QRM loans will be well underwritten, high quality loans without imposing additional requirements on borrowers and lenders which could lead to reduced credit availability.

[1] http://www.aba.com/Tools/Function/Mortgage/Documents/ABACommentonCreditRiskRetention081111.pdf

QRM Equaling QM Should apply to All QM Loans - both safe harbor and rebuttable presumption

Loans that are deemed QM fall into one of two categories depending upon the price of the loan (as determined in reference to the Average Prime Offer Rate). Lower priced loans fall into a safe harbor and higher priced loans receive only a rebuttable presumption of compliance. However, both categories will consist of high quality, well underwritten loans with income and employment verification, a debt to income ratio of not more than 43 percent and no high risk loan features. Thus, if QRM is to equal QM, it should equal all QM loans as they are all high quality loans.

Alternate proposal in the rule: QRM=QM Plus 30% down - is deeply flawed and worse than the original proposal

The re-proposal also asks for comments on an alternative approach, which would add a 30 percent down payment and credit requirements to the QM standards. This approach is deeply flawed and must not be adopted. Known as QM Plus, this alternative would result in very few loans qualifying for QRM status and thus impose risk retention on a majority of loans going forward. This approach is even more restrictive than the 20 percent down requirement in the original rule. As we noted in our original comment letter referenced above, even a 20 percent down payment would result in between 14.5 percent and 20 percent of borrowers being ineligible for a QRM loan. A 30 percent down payment requirement would disqualify an even larger number of borrowers, resulting in higher costs associated with and less credit available due to the required risk retention. Borrowers who would otherwise qualify as low credit risks based on factors (including QM standards) that are more predictive of default risk than loan to value ratios, would not be eligible for a QRM loan. Such an approach would unnecessarily put homeownership out of reach for many borrowers.

The QM Plus approach also revives the credit history requirements which were included in the original proposal but wisely deleted from the QRM=QM approach in the revised proposal. Under the alternative approach, any borrower who is currently 30 or more days past due on any debt, or who has been 60 days or more past due on any debt in the past 24 months would not qualify for QRM status. As amply demonstrated on page 20 of our previously referenced comment letter, the credit history proxies incorporated in QM Plus are poor predictors of default risk, adding an additional fatal flaw to the alternative proposal.

The QM Plus approach would also make the return of private capital for funding of mortgages that much more unlikely. Under the QM Plus approach many fewer borrowers would qualify for QRM status, and they would face higher costs associated with risk retention. As a result, many of those borrowers are likely instead to seek 100 percent guaranteed Federal Housing Administration loans, which are not subject to QRM, as a more affordable alternative. With more borrowers driven to the federally backed program intended for first-time home buyers, the re-emergence of the private securitization market would be curtailed or even halted. This would be an unintended consequence which could further strain federal resources and continue the untenable reliance on federal guarantees for a much of the mortgage market.

Allocation of Risk Retention from Sponsors to Originators should not be subject to a 20 percent pool minimum for those loans not meeting QRM requirements

The re-proposed rule would continue to provide that a securitization sponsor could allocate a proportionate amount of required credit risk to an originator if they have originated at least 20 percent of the pool to be securitized.

We opposed this requirement in the original proposal and continue to oppose it now. There is significant concern from our smaller members that the 20 percent risk transfer threshold could have the effect of locking them out of the private securitization market. We believe it likely that sponsors will seek to pass along some of their risk retention requirements to originators so that, like the sponsors, the originators have skin in the game. To the extent an originator could not meet the 20 percent threshold the sponsor could simply exclude such an originator from the securitization. Therefore, the 20 percent risk transfer requirement could have the effect of locking out smaller market participants with sponsors unwilling to do business with originators who could not share the risk.

Even if sponsors were willing to purchase loans from originators that were ineligible to hold risk due to the 20 percent threshold, we would expect there to be a pricing difference for an originator that was unable to share in the risk retention because the secondary market would simply pass along the risk through increased pricing.

We believe that the ability of small originators to continue to participate in securitization is best addressed by eliminating the 20 percent threshold and permitting all originators to hold a retained interest in in each asset that it originated if they so choose.

Conclusion

For the reasons stated above, the American Bankers Association strongly supports the revised proposal to define QRM as co-incident with the QM rule scheduled for implementation by the Consumer Financial Protection Bureau in 2014. We strongly oppose the alternative QM Plus approach to defining QRM and urge the regulators to reject it. We also urge the regulators to eliminate the 20 percent of pool minimum for loan originators for the purpose of risk allocation. The minimum serves to place small lenders at a disadvantage and could limit participation in the secondary market by these lenders, thus limiting credit availability to the customers they serve. We join in the comments submitted by the Coalition for Sensible Housing Policy, endorse the further arguments made in the white paper submitted by the Coalition, and reiterate support for comments jointly by ABA, SIFMA and FSR.

Sincerely,

Robert R. Davis