National Association
of Federal Credit Unions
3138 10th Street North
Arlington, VA 22201-2149
NAFCU | Your Direct Connection to Education, Advocacy & Advancement

October 29, 2013

Mr. Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Constitution Center
(OGC) Eighth Floor, 400 7th Street, SW
Washington, D.C. 20024

RE: Qualified Residential Mortgage (QRM) Credit Risk Retention – Revised Proposed Rule; RIN Number 2590-AA43

Dear Mr. Pollard:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the Federal Housing Finance Agency's (FHFA) second proposed rule on "qualified residential mortgage" (QRM). The proposed rule was issued jointly by the FHFA, Consumer Financial Protection Bureau (CFPB), Department of Housing and Development, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation (the Agencies).

The proposed rule defines QRM, which will constitute an exception from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requirement that securitizers retain at least 5 percent of the credit risk on mortgages they securitize. Specifically, a securitizer would be exempt from the credit risk retention requirement on securities that are entirely made up of QRMs.

General Comments

NAFCU would first like to express our support for the proposed alignment of the definition of QRM with the CFPB's general definition of "qualified mortgage" (QM). While aligning the definitions is welcome and would minimize unnecessary hurdles and obstacles for credit unions and other mortgage market participants, we are very concerned about several aspects of the QRM/QM definitions and strongly urge the agencies to work together to consider the effect each would have on mortgage lending and provide relief as outlined in this letter.

Although the proposed rule does not specifically apply to credit unions because credit unions generally do not securitize mortgages, it will undoubtedly have a tremendous effect on the mortgage market, thus greatly impacting credit unions' mortgage lending operations

and offerings. Accordingly, we ask that the Agencies consider the following specific comments.

Alignment of QRM and QM

The second proposed rule on QRM would align the definition of QRM with the CFPB's definition of QM.

NAFCU has consistently urged the Agencies to work together to ensure the definitions of the two terms are aligned. Taking such approach, we believe, would decrease the already steep level of regulatory burden and confusion, as well as alleviate market uncertainty and help remove obstacles to credit availability, problems that have been created by the numerous mortgage-related regulations prescribed under the Dodd-Frank Act. Accordingly, while we do not support the substance of the definitions (in fact, we have serious concerns about several components), we strongly support the agencies' proposal to align the two definitions.

No LTV Requirement

Unlike the initial proposed rule to define QRM, the second proposed rule does not contain a minimum loan-to-value (LTV) threshold. NAFCU appreciates the Agencies' recognition that a minimum LTV should not be incorporated in the definition. As such, we urge the Agencies to adopt a QRM definition without an LTV threshold.

Proposed Definition of QRM

Under the Agencies proposed rule, a mortgage that meets the general definition of QM also qualifies as a QRM. NAFCU remains concerned that the definition of QM (and the proposed definition of QRM) is far too restrictive, would make credit more difficult to attain, and will negatively impact competition in the mortgage market. We are especially concerned about the following aspects and limitations in the definition of QRM/QM:

- 30-year term limit;
- different treatment of affiliate and non-affiliate fees in the calculation of points and fees; and
- monthly debt-to-income (DTI) limit of 43 percent.

NAFCU believes the 30-year term limit is too low. As we have stated to the CFPB on a number of occasions, credit unions are permitted to make mortgage loans with terms of up to 40 years by their safety and soundness regulator, the National Credit Union Administration (NCUA). Many credit unions have found that 40–year products enable many borrowers to enter into loans with affordable monthly payments. Such products are even more in demand and appropriate in rising interest rate environments, and enable consumers to purchase a home, often with the knowledge and realistic expectations that they would refinance their mortgages to a shorter-term loan in lower interest rate

environments. If the FHFA and CFPB do not alter this restriction, a large pool of otherwise creditworthy borrowers would be shut out of the mortgage market.

Next, we strongly urge the Agencies to consider excluding affiliate fees from the calculation of points and fees. NAFCU has communicated our concerns regarding the disparate treatment of mortgage loans with similar characteristics. In this case, it is far worse than disparate treatment because the affiliate fees charged by credit unions are often *lower* than those charged by non-affiliates. Credit unions pool their funds together to create affiliates for the specific purpose of attaining economies of scale and consequent lower fees for their members. A rule that treats a loan featuring lower fees with less regard establishes a public policy that is simply regressive.

NAFCU also asks that the Agencies either eliminate or greatly increase the 43 percent DTI limit contained in the definitions of QM/QRM. An arbitrary DTI limit creates far more distress and costs than the benefits it seeks to attain. First, it would exclude many otherwise creditworthy borrowers. These include many highly educated individuals and families who have accumulated significant student debt but in the beginning of their careers would not be able to build wealth and pursue financial independence through the purchase of a house and building of equity. In fact, in its recent directive to Fannie Mae and Freddie Mac to incorporate the CFPB's QM definitions into their guidelines and policies, the FHFA specifically did not include the CFPB's DTI limitations contained in the QM rule. NAFCU believes it is time that the Agencies work together to either eliminate or greatly increase the DTI threshold.

Lastly, we urge the Agencies to refrain from drawing a distinction between those mortgages that fall within the CFPB's "safe harbor" versus those that fall within the CFPB's "presumption of compliance" for higher-priced mortgages. Even assuming that the distinction made in the QM rule is appropriate for the primary market, it does not follow that a similar distinction should be made for the purpose of establishing rules in the securities market. In fact, not drawing a distinction could enhance securitizers' ability to innovate in pooling loans, fostering a more liquid market.

Alternative Approach to Exemptions for QRMs – QRM Plus

The proposed rule contains an alternative approach in establishing a definition of QRM. Under the alternative approach, referred in the proposal as QRM-Plus, the core criteria of QM would be included. In addition, among other things, there would be a 70 percent minimum LTV requirement, and the scope of the definition would be limited to first lien mortgages on one-to-four-family principal dwellings. Unlike the primary approach, the alternative approach to defining QRM does not draw a distinction between those mortgages that fall within the CFPB's "safe harbor" versus those that fall within the CFPB's "presumption of compliance" for higher-priced mortgages.

While we recognize that there are aspects of the alternative approach that would be welcome, including the fact that there would not be a distinction between "safe harbor"

and "presumption of compliance," NAFCU believes that the limited scope in terms of the types of loans covered and the LTV requirement pose significant concerns relative to a lender's ability to sell a larger proportion of its loans. Further, if an alternative approach is concurrently adopted, we believe it will create unnecessary uncertainties and confusion.

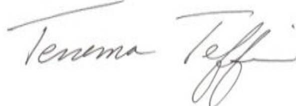
Additional Comments

NAFCU would like to take this opportunity to address an overlooked but very important effect of aligning the definition of QM and QRM – perpetuation of the use of one brand of credit scoring model. This significant unintended consequence will occur because the CFPB's QM rule provides for a QM category for loans that are eligible for purchase by Fannie Mae and Freddie Mac, and both entities require that loans are underwritten using FICO score models.

To address this unintended consequence, we strongly urge the FHFA to require Fannie Mae and Freddie Mac to accept mortgages underwritten with other validated credit scoring models in addition to the single brand currently permitted.

NAFCU appreciates the opportunity to provide comments. Should you have any questions or would like to discuss these issues further, please contact me by telephone at (703) 842-2268 or by email at ttefferi@nafcu.org.

Sincerely,



Tessema Tefferi
Senior Regulatory Affairs Counsel