October 30, 2013

BY ELECTRONIC SUBMISSION

Office of the Comptroller of the Currency
400 7th St. SW, Suite 3E-218
Washington, DC 20219
Docket Number OCC–2013–0010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
File Number S7–14–11

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551
Docket No. R–1411

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RIN 2590–AA43

Robert E. Feldman
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550 17th Street NW
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RIN 3064–AD74

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500
Docket No. FR–5501–P–01

Re: Credit Risk Retention – Joint Proposed Rule

Ladies and Gentleman:

The undersigned coalition of U.S. Mortgage Insurers (the "Coalition") welcomes the opportunity to submit comments on the agencies' proposed rule ("Proposed Rule") to implement the credit risk retention requirements in section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[1] The Proposed Rule revises a proposed rule originally published in the Federal Register by the agencies on April 29, 2011.

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[1] Section 941 of Dodd-Frank added section 15G to the Securities Exchange Act of 1934, 15 U.S.C. § 78o-11.

In general, the Coalition believes the Proposed Rule strikes an appropriate balance between encouraging safe and financially prudent mortgage lending as part of a competitive and stable mortgage market, while helping ensure that creditworthy homebuyers have access to mortgage loans with fair and sustainable finance terms. In this context, we support the agencies' alignment of the definition of "qualified residential mortgage" ("QRM") in the Proposed Rule with the definition of "qualified mortgage" ("QM") set forth in regulations promulgated by the Consumer Financial Protection Bureau.[2] Alignment of the QRM and QM definitions provides much-needed consistency to the mortgage markets to better foster high quality underwriting and to standardize securitizations for investors. More important, the expansion of the QRM definition to cover a much broader range of conservative, prudently underwritten mortgages will avoid the negative consequences arising from an excessively narrow definition, *i.e.*, the uncertain and potentially devastating effects of relying primarily on risk retention to assure the right balance of prudent underwriting and adequate credit availability.

As proposed, the QM definition would not require any minimum down payment or maximum loan-to-value ratio. Nevertheless, the Proposed Rule revisits this issue by asking a question about the so-called "QM-plus alternative," where the QM definition would be amended to require a 30 percent down payment. Such a high down payment requirement would gut the very purpose of the QRM exception, which is to preserve the continued availability of traditional, prudently underwritten mortgages for which risk retention is unnecessary. Indeed, the QM-plus alternative would be even narrower than the original QRM proposal; our objections to the alternative are therefore the same and even stronger than the ones that were raised by many who commented on the original QRM proposal.

Having said this, the Coalition is aware that some form of down payment or combined loan-to-value ("CLTV") requirement may be considered by the agencies as a necessary supplement to the proposed QRM definition, even though not part of the QM definition – and presumably at a much more reasonable level than the excessive 30 percent down payment requirement in the QM-plus alternative. This would be in recognition of the fact that reasonable CLTV requirements have generally been required in a broad range of prudently underwritten mortgages, and that such requirements have reduced both the probability of default and loss given default on mortgages to which they apply.

If the agencies decide to revise the QRM definition in this manner, the Coalition has three recommendations: (1) establish the requirement at reasonable levels that would enable the QRM definition to still apply to a very broad class of borrowers; (2) expressly allow credit enhancement such as mortgage insurance to qualify toward any such requirement; and (3) do not allow "piggy back" second loans to so qualify.

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[2] *See* 78 Fed. Reg. 6408 (Jan. 30, 2013), as amended by 78 Fed. Reg. 35430 (June 12, 2013).

The remainder of this comment letter sets forth the background for these recommendations contained in both the original proposed rule published in the Federal Register on April 29, 2011, as well as the Proposed Rule. It then sets forth our three recommendations in the context of responding to specific questions raised in the Proposed Rule.

Original Proposed Rule Published on April 29, 2011

The agencies' original proposed rule implementing section 941 of Dodd-Frank defined the QRM exception narrowly. QRMs were appropriately prohibited from having "exotic" product features that contributed to the high levels of mortgage foreclosures in and following 2007, such as negative amortization. But the definition also included other, very conservative underwriting standards that would effectively make the exception apply to only a limited class of loans. Key among these underwriting standards was a requirement of a 20 percent down payment for a purchase mortgage, with no recognition of credit enhancement.

We note that many commenters on the original QRM proposal provided data that demonstrated how the high down payment requirement without recognition of credit enhancement would deny creditworthy borrowers access to loans on affordable terms without meaningfully decreasing rates of default. The original definition also would have shrunk the availability of credit more generally by limiting the mortgages eligible for the QRM definition and making risk retention requirements the norm across most forms of mortgage credit, thereby significantly increasing the cost of lending and stunting the nation's housing recovery. There was and is broad support for expanding the QRM in a prudent manner to promote sound lending behavior, attract private capital, and reduce future defaults – but without denying access to borrowers.

Revised Proposed Rule

The agencies' Proposed Rule significantly revised the proposed QRM definition to incorporate by reference the definition of QM from the CFPB's final rules implementing the ability-to-pay requirements in sections 1411 and 1412 of Dodd-Frank.[3] Under those rules, a loan generally must satisfy the following conditions in order to be a QM:

- Regular periodic payments that are substantially equal;
- No negative amortization, interest only, or balloon features;
- A maximum loan term of 30 years;

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[3] *See* 78 Fed. Reg. 6408 (Jan. 30, 2013).

- Total points and fees that do not exceed 3 percent of the total loan amount, or the applicable amounts specified in the QM rule, for small loans up to $100,000;

- Payments underwritten using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment is due;

- Consideration and verification of the consumer's income and assets, including employment status if relied upon, and current debt obligations, mortgage-related obligations, alimony and child support; and

- Total debt-to-income ratio that does not exceed 43 percent.[4]

- *Temporary Rule for GSE-eligible mortgages* – A loan also may be considered a QM if it is eligible to be purchased or guaranteed by one of the GSEs (while it is in conservatorship) or insured or guaranteed by FHA, VA or USDA and satisfies four conditions: (1) regular periodic payments that are substantially equal; (2) no negative amortization, interest only, or balloon features; (3) a maximum loan term of 30 years; and (4) total points and fees that do not exceed 3 percent of the total loan amount, or the applicable amounts specified in the QM rule, for small loans up to $100,000.[5]

Importantly, the QM definition does not include a minimum down payment requirement.[6] The preamble to the Proposed Rule acknowledged the widespread opposition voiced by the public to the minimum down payment requirement on the grounds that it (1) would significantly increase the cost of credit and restrict access to credit and (2) was contrary to legislative intent.[7]

The Proposed Rule also asks questions about a potential alternative approach to defining QRM that would use the QM standards as a starting point and incorporate additional standards intended to reduce the risk of default. The agencies state that the proposed approach to defining QRM solely by reference to QM is sound from a policy and legal perspective, but the agencies are requesting comment on the alternative approach, referred to as the "QM-plus alternative," because it was considered during the rulemaking process. The additional standards

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4 *See* 12 C.F.R. § 1026.43(e)(2); 78 Fed. Reg. 57991 (Sept. 20, 2013).

5 *See* 12 C.F.R. § 1026.43(e)(4).

6 *See* 78 Fed. Reg. 57992 (Sept. 20, 2013) ("For the reasons discussed above, the agencies are not proposing to incorporate either an LTV ratio requirement or standards related to a borrower's credit history into the definition of QRM.").

7 *See* 78 Fed. Reg. 57933 (Sept. 20, 2013).

that loans would be required to satisfy in order to be QRMs under the QM-plus alternative approach are the following:

- Loans must be secured by one-to-four family real properties;
- Only first-lien mortgages would qualify (and excluding piggy-back loans);
- The borrower: may not be 30 or more days past due on any debt obligation; may not have been 60 days or more past due on any debt obligations within the preceding 24 months; and in the preceding 36 months, may not have been a debtor in a bankruptcy proceeding or subject to a judgment for unpaid debt, may not have had personal property repossessed or a one-to-four family property foreclosed upon, and may not have engaged in a short sale or deed in lieu of foreclosure; and
- The LTV ratio at closing could be no greater than 70 percent.

The QM-plus approach would include a dramatically smaller portion of the mortgage market in the QRM definition,[8] and accordingly far fewer loans would be exempt from the risk retention requirements.

Responses to Specific Questions in the Proposed Rule

90. [The agencies invite comment on all aspects of the proposal to equate QRM with QM. In particular,] Does the proposal reasonably balance the goals of helping ensure high quality underwriting and appropriate risk management, on the one hand, and the public interest in continuing access to credit by creditworthy borrowers, on the other?

The agencies' proposal to equate QRM with QM encourages safe and financially prudent mortgage lending while ensuring creditworthy homebuyers have access to safe mortgage financing with lower risk of default. The proposal will establish standards that address the information asymmetry between securitization sponsors and investors, are sufficiently stringent to protect consumers from risky mortgage products, and at the same time encourage the return of private capital into the mortgage market.

Congress, by including the QRM exemption in section 941 of Dodd-Frank, recognized that the need for credit risk retention is minimized with respect to prudently underwritten mortgages. The agencies have given effect to this congressional intent by defining QRM with prudent underwriting in mind; unlike the original proposed definition, the new

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[8] 78 Fed. Reg. 57994 (Sept. 20, 2013).

definition would apply to a broad class of traditional, prudently underwritten loans available to a wide range of creditworthy borrowers.

With that said, the Coalition understands that the agencies may be considering some form of down payment or CLTV requirement as a supplement to the QRM definition, at least insofar as the QM-plus alternative contains such a requirement. If the agencies decide to revise the QRM definition to include a down payment or CLTV requirement, the agencies should carefully calibrate the requirement in order to avoid the detrimental effects posed by the original proposed rule. The Coalition has three recommendations to achieve this objective:

First, if the agencies decide to incorporate a down payment or CLTV requirement, it should be established at a much higher CLTV ratio than the 70 percent requirement in the QM-plus alternative so that the QRM definition applies to a broad class of borrowers. If the down payment or CLTV requirement serves to limit the QRM definition to only a handful of mortgage loans, credit risk retention will be the prevailing standard across the mortgage lending industry and far too many creditworthy borrowers will be denied access to credit on the best available terms.

Second, consistent with the first recommendation's goal of preserving access to credit for creditworthy borrowers, the agencies should expressly allow a mortgage loan with credit enhancement, such as private mortgage insurance at standard coverage levels recognized by the Federal Housing Finance Agency, to satisfy any down payment or CLTV requirement. For example, if the QRM definition included a three percent down payment requirement, a mortgage loan would fall within the QRM definition as long as the borrower satisfied the requirement with a combination of a cash down payment and sufficient private mortgage insurance. By recognizing credit enhancement in this way, a down payment or CLTV requirement in the QRM definition would better preserve access to credit while at the same time achieving the prudential goals of lowering both probability of default loss given default.

Third, the agencies should not permit a loan to satisfy a CLTV or down payment requirement through "piggyback" second lien arrangements in which a borrower simultaneously takes out first and second mortgages where the latter in effect finances the down payment. As the preamble to the Proposed Rule notes, the use of piggyback second mortgages to meet CLTV or down payment requirements significantly increases the risk of default.[9] Piggyback arrangements also may present significant challenges to loan modifications or other workouts that serve the interests of borrowers and investors. Finally, investors may not be able to identify loans with piggyback second mortgages and therefore make fully informed investment decisions.

97(a). Does the QM-plus approach have benefits that exceed the benefits of the approach discussed above that aligns QRM with QM? For example, would the QM-plus

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[9] *See* 78 Fed. Reg. 57996 (Sept. 20, 2013).

approach favorably alter the balance of incentives for extending credit that may not be met by the QM definition approach or the QRM approach previously proposed? 97(b). Would the QM-plus approach have benefits for financial stability?

98. Would the QM-plus approach have greater costs, for example in decreased access to mortgage credit, higher priced credit, or increased regulatory burden?

The QM-plus approach would severely restrict mortgage credit by requiring risk retention for a significant majority of one-to-four family mortgages. According to information prepared by CoreLogic, the percentage of purchase mortgages that satisfy the QRM definition – if the QRM definition is aligned with the QM definition – is approximately 67 percent. That number declines to 18 percent if a 30 percent down payment is required. The QM-plus down payment requirement would significantly increase the costs of mortgages by requiring risk retention, and its associated costs, for mortgages provided to all but the most wealthy of borrowers.

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The Coalition appreciates the opportunity to comment on the agencies' Proposed Rule. Questions or requests for further information may be directed to Rohit Gupta (Rohit.Gupta@Genworth.com) or Adolfo Marzol (Adolfo.Marzol@Essent.us)

Sincerely,

The Coalition of U.S. Mortgage Insurance Companies

Arch U.S. MI Holdings Inc.
Essent Guaranty, Inc.
Genworth Financial
Mortgage Guaranty Insurance Corporation
National Mortgage Insurance Corporation
Radian Guaranty Inc.