August 1, 2011

Office of the Comptroller of the Currency
250 E Street, SW, Mail
Stop 2–3, Washington, DC 20219
(Via: regs.comments@occ.treas.gov)

Jennifer J. Johnson, Secretary
Federal Reserve Board of Governors
20th Street and Constitution Avenue, NW
Washington, DC 20551
(Via E-mail: regs.comments@federalreserve.gov)

Robert E. Feldman, Executive Secretary
Attention: Comments, Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
(Via E-mail: Comments@FDIC.gov)

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission,
100 F Street, NE
Washington, DC 20549–1090
(Via E-mail: rule-comments@sec.gov)

Alfred M. Pollard, General Counsel,
Attention: Comments/RIN 2590–AA43
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW
Washington, DC 20552
(Via E-mail: RegComments@fhfa.gov)

RE: **OCC: Docket Number OCC–2011–0002;**
FRB: Docket No. 2011–1411;
FDIC: Docket No. RIN 3064–AD74;
SEC: Release No. 34–64148; File No. S7–14–11
FHFA: RIN 2590–AA43

Dear Regulators,

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the proposed rule issued by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Federal Housing Finance Agency (collectively, the "Agencies") to implement the risk retention requirements and the definition of a Qualified Residential Mortgage (QRM), as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act's (Dodd-Frank

Act). MCUL is a statewide trade association representing 95% of the credit unions located in the State of Michigan.

MCUL understands the necessity to address weaknesses and failures in the securitization process and the securitization markets in response to the actions of unscrupulous mortgage lenders who originated and sold high-risk, low-quality mortgage products that resulted in high-risk, low-quality mortgage backed securities (MBSs).

Though the proposed rules were not designed to have a direct impact on the credit union industry, credit unions and their respective members will be negatively impacted by the definition of a Qualified Residential Mortgage (QRM), given that QRMs will very likely become the industry standard for mortgage loans sold on the secondary market. As a result, credit unions, especially smaller credit unions, will have to evaluate the burden of compliance costs of this proposal and if excessive, there is a very real likelihood they could cut back on the type and number of mortgage loan products offered, which in turn will have a negative impact on potential mortgage loan borrowers.

MCUL strongly urges the Agencies to withdraw this proposed rule and issue a more reasonable framework to address the weaknesses in the securitization process while ensuring that potential borrowers have adequate access to mortgage credit.

Treatment of Government-Sponsored Enterprises (GSEs)

The proposed rule would exempt the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the GSEs) from the 5% risk retention requirements while each is operating under the conservatorship or receivership of the Federal Housing Finance Agency.

MCUL is concerned that this provision places the GSEs at an unfair advantage at a time when many in the U.S. Congress are seeking to encourage more private-sector involvement as a result of the poor performance of the GSEs in securitizing high-risk mortgages and purchasing high-risk MSBs. Given the fact that the proposed rule provides evidence that less than 20% of all residential mortgage loans purchased or repackaged by the GSEs from 1997 through 2009 would have met the proposed standards for QRMs, MCUL does not believe that such an exemption would serve to improve the health of the residential mortgage loan industry.

Additionally, MCUL believes this exemption and the restrictive definition of a QRM will force virtually all low down payment lending to the Federal Housing Agency (FHA), due to the fact that FHA requires only a 3.5% down payment. This will increase borrower costs, reduce borrower choice, and place non-FHA mortgage loan providers (like many credit unions) at a severe disadvantage.

Qualified Residential Mortgages

Overall Approach to Defining Qualifying Residential Mortgages

Despite the fact that the standards of a QRM would be very difficult for many potential borrowers to achieve, the Agencies believe that "the amount of non-QRM residential mortgages should be sufficiently large, and include enough prudently underwritten loans, so that ABS backed by non-QRM residential mortgages may be routinely issued and purchased by a wide variety of investors." MCUL believes in order for this to be accurate, the Agencies would have to assume that securitizers would be readily willing to comply with the complex risk retention and disclosure requirements under the proposed rule, and that non-FHA QRMs will even remain an acceptable option for potential borrowers. MCUL believes that there is a much greater incentive to offer QRMs in order to reduce the already overwhelming and ever-increasing regulatory burden, which will have a directly negative impact on the availability of mortgage credit, especially for low- to moderate-income consumers.

In considering how to determine whether a mortgage is of sufficient credit quality, the Agencies examined data from various sources and reviewed specific aspects of borrowers who defaulted on their respective mortgages. The Agencies then appeared to take each element that may have contributed to a default and combined them to define the QRM. MCUL believes the definition of a QRM is inconsistent with prudent underwriting practices and the assessment of credit risk that take different criteria into account to determine whether the low-risk factors offset the higher-risk factors.

Borrower Credit History

Under the proposed rule, a borrower could not qualify for a QRM if currently 30 days late, in whole or in part, on any debt obligation; 60 days or more days late on any debt obligation within the preceding 24 months; or, within the past 36 months the borrower had been a debtor in bankruptcy, had property repossessed or foreclosed upon, had engaged in a short sale or deed-in-lieu of foreclosure, or had been subject to a Federal or State judgment for collection of any unpaid debt.

While much of this criteria is reasonable and generally taken into account by prudent underwriters, there are many legitimate reasons why a consumer would be 30 days late on a payment that do not relate to the ability to repay a mortgage loan or the overall creditworthiness of a borrower. Additionally, the proposed rule does not define a "debt obligation." A late mortgage payment might be a good indication of an inability to repay a new mortgage loan, but a late electric bill does not provide sufficient evidence that a borrower is a credit risk on a new mortgage loan.

MCUL is not as optimistic as the Agencies that non-QRMs would be available for potential borrowers, and believes the end result of this provision of the proposal would be that borrowers

who had spent years to save for the required 20% down payment and were inadvertently late on one payment would be denied mortgage credit. MCUL does not believe this was the intent of the United States Congress when the Dodd-Frank Act was deliberated or passed.

Payment Terms

The proposed rule would prohibit QRMs from having, among other features, payment terms that allow interest-only payments, negative amortization, or adjustable-rate mortgages with interest rates that do not exceed prescribed limits under the proposal.

Credit unions mortgage loan portfolios have performed well during the mortgage meltdown due to strong underwriting practices and lower-risk mortgage product offerings, even though many of those loans were provided to borrowers who would not have been approved under the proposed QRM standards. MCUL strongly supports limiting the availability of high-risk mortgage loan features, and believes the focus should be on the types of mortgages that pose the greatest risk to the residential mortgage market rather than placing restrictions on those that do not.

Loan-to-Value (LTV) Ratio

For purchase mortgage transactions, the proposed rule would require an LTV ratio of 80%; 75% on rate and refinance loans; and 70% for cash-out refinance loans.

MCUL is concerned that these provisions will have the effect of reducing the number of eligible borrowers for mortgage loans, and will prevent the refinancing of loans that are in the best interest of many homeowners.

MCUL urges the Agencies to re-examine these proposed provisions in order to further study the impact of private mortgage insurance on loans with higher LTV ratios, given that such insurers may be willing to accept the risks of default.

Down Payment

The proposed rule would require borrowers to provide a 20% down payment (plus costs) in order to qualify for a QRM. MCUL believes this requirement is harsh and will likely force otherwise qualified borrowers, who could afford to make monthly mortgage payments with some smaller amount of down payment, or a combination of a smaller amount of down payment and PMI, out of the mortgage market for decades. Low-to-moderate income consumers would very likely lose the opportunity to achieve the dream of home ownership permanently.

The Agencies appear to have recognized this fact in its footnoted statement that “while many creditworthy homebuyers seeking to purchase a home will likely not have the 20% down payment required for a QRM, sound underwriting of these loans may well require the prudent use of judgment about the borrower’s ability to repay the loan and other risk mitigants that are

likely to change over time and vary from borrower to borrower." MCUL agrees with this statement, and does not believe this provision of the proposed rule represents the intention of the U.S. Congress when deliberating and passing the Dodd-Frank Act. MCUL strongly urges the Agencies to reconsider its position to require borrowers to put 20% down on a home in order to qualify for a QRM.

The proposed rule would not consider the risk mitigation effects of mortgage guarantee insurance or other credit enhancements obtained at the time of origination, as the Agencies "have not identified studies or historical loan performance data adequately demonstrating that mortgages with such credit enhancements are less likely to default than other mortgages."

MCUL urges the Agencies to reconsider this position. Borrowers that do not have a 20% down payment, but otherwise meet responsible underwriting criteria, receive a valuable benefit from mortgage guarantee insurance. Without it, borrowers would either be confronted with having to pay exponentially more to obtain a mortgage loan, or be prevented from obtaining home ownership status for a much longer period of time in order to save enough money for a down payment. MCUL respectfully submits that while there does not appear to be any evidence to suggest that mortgages with mortgage guarantee insurance or other credit enhancements are less likely to default than other mortgages, there is no evidence to suggest that mortgages with these additional products are any *more likely* to default than mortgages without them.

Qualifying Appraisal

A QRM would be required to be supported by a written appraisal that conforms to generally accepted appraisal standards, as evidenced by the Uniform Standards of Professional Appraisal Practice, the appraisal requirements of the Federal banking agencies, and applicable laws.

MCUL supports this provision as part of the definition of a QRM.

Ability to Repay

The rule proposes a front-end debt-to-income (DTI) ratio limit of 28% and a back-end ratio limit of 36%. For purposes of calculating these proposed ratios, the proposal would require originators to use the borrower's monthly gross income, as determined in accordance with the effective income standards set forth in the HUD Handbook, which have been incorporated into the Additional QRM Standards Appendix to the proposed rules.

While MCUL believes that DTI ratios are an appropriate risk indicator for residential mortgages, the proposal would require this ratio to be viewed in isolation. MCUL believes the proposed back-end DTI of 36% is overly restrictive and should be relaxed so long as low-risk mitigating factors are also present in the underwriting process. MCUL urges the Agencies to amend these provisions in order to prevent otherwise creditworthy borrowers from obtaining home ownership.

Points and Fees

Under the proposal, in order for a mortgage to qualify as a QRM, the total points and fees payable by the borrower in connection with the mortgage transaction shall not exceed 3% of the total loan amount, which would be calculated in the same manner as in Regulation Z. MCUL does not see the correlation between higher points and fees and mortgage default, and urges the Agencies to remove these criteria from the definition of a QRM.

Assumability Prohibition

Under the proposed rules, a QRM could not be assumable by any person who was not a borrower under the original mortgage transaction.

Many home owners have taken advantage of the low-rate market by refinancing their existing mortgages for lower rate options. In a rising interest rate market, potential borrowers may choose to assume an existing low-rate mortgage rather than seeking a higher mortgage loan amount with a higher interest rate. Provided the purchaser otherwise met the criteria of a QRM-qualified borrower, MCUL does not see the risk that an assumed mortgage would pose. MCUL urges the Agencies to reconsider this provision of the proposed rule.

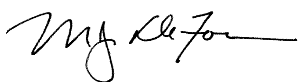
Conclusion

While MCUL appreciates the difficult task the Agencies were charged with in order to mitigate risk in the mortgage market, MCUL believes this proposed rule will end up harming the still fragile residential mortgage industry the rule was designed to protect, as the number of eligible borrowers and the availability of attainable mortgage credit would be severely reduced.

MCUL supports aspects of the proposed rule that focus on the types of high-risk, exotic mortgage products that were packaged into high-risk MSBs that the Dodd-Frank Act was designed to limit. MCUL strongly urges the Agencies to focus on mortgages that pose the greatest risk to the residential mortgage market rather than broadly restricting those that do not when crafting a definition of a QRM.

MCUL appreciates the opportunity to comment.

Sincerely,



VP Regulatory Affairs
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