Office of the Comptroller of the Currency
250 E Street, S.W
Washington, DC 20219
Re: RIN 1557-AD40 [Docket No. OCC-2011-0002]

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution, N.W.
Washington, DC 20551
RIN 7100-AD-70 [Docket No. 2011-1411]

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington DC 20429
RIN 3064-AD74

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington DC 20549
RIN 3235-AK96 [File No. S7-14-11]

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
1700 G Street, NW
Washington DC 20552
RIN 2590-AA43

Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410-0500
RIN 2501-AD53

Re: Credit Risk Retention

OCC RIN 1557-AD40 [Docket No OCC-2011-0002]

FRB RIN 7100-AD-70 [Docket No. 2011-1411]

FDIC RIN 3062-AD74

SEC RIN 3235-AK96 [File No. S7-14-11]

FHFA RIN 2590-AA43

HUD RIN 2501-AD53 [FR-5504-P-01]

Dear Ladies and Gentlemen:

In response to the request for comments dated April 29, 2011, by the six federal agencies listed above regarding the proposed rules relating to Credit Risk Retention requirements as specified in section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, AARP is pleased to submit the following comments on the definition of "Qualified Residential Mortgages", Questions 106-149. The question numbers on which AARP comments are given below.

As an organization representing people age 50 plus, AARP recognizes the need for a stable and liquid housing market. Housing is the major financial asset for most households in the United States. Homeownership serves as a form of insurance for older owners providing a buffer against contingencies such as unexpected health or living expenses. According to a recent study by the Center for Retirement Research at Boston College, a home accounts for half of the wealth of a typical household approaching retirement (age 55 to 64, excluding the present discounted value of Social Security and defined pension benefits[1]). Over three-quarters (78 percent) of households age 50 and older are homeowners[2]. The ability to build up equity in a home is particularly important in this age of do-it-yourself retirement where many Americans must save for their own retirement and can no longer count on pensions to support them after they stop working.

People aged 50 plus are major participants in the mortgage market. In 2010, almost half of sellers (48 percent) and 29 percent of home buyers were age 50 and older.[3] Approximately 75 percent of buyers age 50 and older took out a mortgage to finance their home purchase.[4] It is also important to older Americans who need to sell their home that financing be available to potential buyers.

A vital part of a stable and liquid housing market is access to mortgage financing. During most of the 20th century after the Great Depression, Americans were able to buy homes with conventional 30-year and other standard types of mortgages with varying down payments, often with mortgage insurance. These loans were carefully underwritten, documented and lenders considered whether the buyer had the ability to repay the loan. Americans accumulated equity in their homes which could help to finance their retirement and pay for long term services and supports.

Only at the end of the 20th century and in the first decade of the 21st did home mortgage lending go off track, financing mortgages without verifying buyers' ability to repay and in many cases enticing buyers, particularly minorities, to take on mortgage debt they could not afford often at rates unrelated to their creditworthiness. It is therefore understandable that Congress has asked the regulatory agencies to promulgate rules to address these problems. However, AARP believes that the new rules should help, not hinder, the housing market recovery, and should not deny creditworthy borrowers access to low-cost financing. They should have the same ability to purchase a home and grow this important asset over time as they had for most of the last half of the 20th century. It is important to target the practices that caused the problems in the housing market and economy, not the overall system which worked well for over half a century. To that end, we offer the following comments by question number.

106. Is the overall approach taken by the Agencies in defining a QRM appropriate?

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[1] A.H. Munnell and M. Soto, *The Housing Bubble and Retirement Security".* Center for Retirement Research at Boston College, Number 8-12 (September 2008).

[2] 2009 American Housing Survey, U.S Census Bureau.

[3] AARP estimates based on populations data obtained from the U.S. Census Bureau and the National Association of Realtors® Profile of Home Buyers and Sellers 2010, pages 12 and 82.

[4] *Ibid*, page 70.

While many of the underwriting factors and product features required to qualify for QRM status are appropriate, several of the underwriting standards set forth in the proposal are too restrictive and would sharply limit the number of buyers who could qualify for QRM loans. Only 19.8 percent of loans purchased by Fannie Mae and Freddie Mac from 1997 to 2009 would meet the proposed QRM criteria.[5] AARP believes that most well underwritten conventional loans with a reasonable down payment and mortgage insurance should qualify for QRM status.

While AARP agrees that borrower credit history is an important factor in evaluating borrower credit quality, some of the requirements as proposed are too rigid, such as no late payments in the past 30 days leading to automatic disqualification. The required loan-to-value (LTV) of 80 percent for a purchase is also too high, especially given that there is no consideration made for mortgage insurance. The required down payment of 20 percent in addition to separate funds for closing costs will keep a substantial number of potential homebuyers out of the market for longer periods, since it will take many more years to save for the higher down payment. This requirement will affect low-and moderate-income borrowers disproportionately.

107. What impact might the proposed rules have on the market for securitizations backed by QRM and non-QRM residential mortgage loans?

The size and liquidity of the securitization market for QRMs under the proposed rules will be somewhat limited, since most borrowers, approximately 80 percent, will not qualify for a QRM mortgage. Meanwhile, the non-QRM securitization market will also be somewhat limited as the cost of non-QRM mortgages will be higher due to the risk-retention requirements. It is not known to what extent securitizers will be willing to purchase and securitize non-QRM mortgages.

108. What impact, if any, might the proposed QRM standards have on pricing, terms, and availability of non-QRM residential mortgages, including to low and moderate income borrowers?

Some analysts estimate interest rates on non-QRM loans will be 50 to 75 basis points higher than QRM interest rates.[6] Over the life of a $200,000, 30-year loan at a QRM rate of 5.5%, this amounts to an estimated $23,000 to $35,000 increase in cost to the non-QRM borrower. As a result, higher monthly payments will be required, and the amount that can be borrowed will be reduced due to the higher costs. People with low- and moderate-incomes will be most affected by these higher costs. If lenders view non-QRM loans as too problematic as a result of the risk retention requirements, they may choose not to make them at all or charge even higher rates than those suggested by analysts. This will leave low- and moderate-income borrowers with no choice other than FHA as the source of mortgage financing. Borrowers with incomes too high to qualify for FHA loans, many considered middle class, will be left with substantially higher borrowing costs and limited access to homeownership.

111(a). The Agencies seek comment on whether mortgage guarantee insurance or other types of insurance or credit enhancements obtained at the time of origination would or would not reduce the risk of default of a residential mortgage that meets the proposed QRM criteria but for a higher adjusted LTV ratio. Commenters are requested to provide historical loan performance data or studies and other factual support for their views if possible, particularly if they control for loan underwriting or other factors known to influence credit performance.

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[5] Federal Register/Vol. 76, No. 83/ Friday, April 29, 20111/Proposed Rules, page 24141.
[6] Inside Nonconforming Markets, May 6, 2011, page 5.

The purpose of mortgage insurance is not to reduce the risk of default; it is to reduce the loss to the lender in the event of default. Historically, loans that did not meet an LTV ratio of 80 percent required mortgage insurance. The presence of mortgage insurance enabled these loans to be sold to the GSEs and provided borrowers with financing at more favorable interest rates than would have otherwise been available. Research shows that well-underwritten loans with LTVs of less than 80 percent, but with mortgage insurance, have performed well, even during the market downturn.[7] The use of mortgage insurance also provides a second underwriting of the loan, provided the mortgage insurer is independent of the loan originator.

111(b). If the information indicates that such products would reduce the risk of default, should the LTV ratio limits be increased to account for the insurance or credit enhancement?

We believe that the presence of mortgage insurance increases the quality of a loan, and when combined with responsible underwriting, higher LTV limits should be allowed within the QRM definition.

111(c). If so, by how much?

Research provided by the Agencies in the rule proposal shows that default rates for purchase transactions with LTVs between 80 and 95 percent are relatively flat, averaging approximately 5.25 percent, while default rates for loans LTVs of 95 to 100 percent jump to approximately 8.5 percent.[8] Based on this data, it appears that LTVs up to 95 percent could be reasonable, since there is little improvement in default rates when moving from LTVs of 95 to 80 percent.

115. Are the proposed credit history standards useful and appropriate indicators of the likelihood that a borrower might default on a new residential mortgage loan?

AARP believes that credit history is an important part of the underwriting process. However, the proposed standards are too restrictive and do not take into account the entire view of borrower creditworthiness, particularly of borrowers with thin credit files. For example, many consumers pay rent and utility bills regularly, yet these items will not appear on a credit report. The rule would require 24 months of history for every debt obligation of the borrower, but rent and utilities are not debt.

116. Are there additional or different standards that should be used in considering how a borrower's credit history may affect the likelihood that a borrower might default on a new mortgage?

Payment history of rent and other bills should be included for consideration. In addition, whether a potential borrower has obtained homeownership counseling or is working with a group that helps potential borrowers prepare for homeownership are factors that should be considered.

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[7] Comments submitted by Genworth Financial to the Securities and Exchange Commission, March 15, 2011. Analysis was based on 4.7 million loans from 2002 through 2008 obtained from CoreLogic. The report is available at: http://www.sec.gov/comments/df-title-ix/asset-backed-securities/assetbackedsecurities-49.pdf.

[8] See graph: Federal Register/Vol. 76, No. 83/ Friday, April 29, 20111/Proposed Rules, page 24124.

118. The Agencies request comment on the appropriateness of the safe harbor that would allow an originator to satisfy the documentation and verification requirements regarding a borrower's credit history by obtaining credit reports from at least two consumer reporting agencies that compile and maintain files on consumers on a nationwide basis.

The safe harbor is appropriate for borrowers who have a credit history; however, a substitute safe harbor should be developed for borrowers with limited or no credit history.

120. The Agencies seek comment on the appropriateness of the proposed LTV and combined LTV ratios for the different types of mortgage transactions.

As stated above, the proposed LTV of 80 percent is too high. The proposed down payment of 20 percent, in addition to funds for closing costs, is in many instances too restrictive. As stated previously, well underwritten insured loans with down payments between 5 and 20 percent do not demonstrate a substantial increase in default rates. In contrast is the fact that a 20 percent down payment would have kept an average of 22.3 percent of otherwise creditworthy borrowers out of QRM mortgages over the seven-year period 2002 to 2008.[9] Other loan attributes have been found to influence loan performance far more than the LTV ratio. Well underwritten loans originated in 2006 and 2007 and insured by MGIC, with a 5 percent down payment, have experienced only a relatively modest foreclosure rate. Foreclosure rates increase substantially when risky loan attributes are present, such as: low or no documentation, non-owner occupied, subprime credit, negative amortization, and total debt-to-income ratios above 45 percent.[10]

AARP is concerned that the LTV requirements for refinance transactions are also too restrictive. In the case of a rate and term refinance, homeowners are often taking advantage of lower interest rates. The requirement that LTV be 75 percent would prohibit people from taking advantage of an opportunity to lower their interest rate and/or payments. A rate and term refinance transaction should not contain restrictions that are any tighter than for a purchase transaction. Many homeowners depend on their home equity to finance major needs, like college tuition or long term care services. The LTV requirement of 70 percent for cash out refinancing appears to be overly restrictive. Examination of data provided by the Agencies shows the default rate for cash out refinance transactions spikes sharply after 80 percent.[11] Therefore, we think the required LTV should not be less than 80 percent for cash out refinance transactions.

121. The Agencies request comment on the proposed amount and acceptable sources of funds for the borrower's down payment.

The proposed down payment of 20 percent, in addition to funds for closing costs, is too restrictive and likely to exclude a substantial number of creditworthy borrowers from QRM status. As stated previously, well underwritten insured loans with down payments between 5 and 20 percent do not demonstrate a substantial increase in default rates. In contrast, a 20 percent down payment would have kept an average of 22.3 percent of otherwise credit-worthy borrowers out of QRM mortgages

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[9] Center for Responsible Lending, Community Mortgage Banking Project, Mortgage Bankers Association, Mortgage Insurance Companies of America, National Association of Home Builders, and National Association of Realtors, White Paper, "Proposed QRM Harms Creditworthy Borrowers and Housing Recovery," April 13, 2011, page 4.

[10] Moody's Analytics, Special Report: The Skinny on Skin in the Game, Mark Zandi and Cristian deRitis, March 11, 2011, page 3.

[11] Op. cit. Federal Register/ vol.76.

over the seven-year period 2002 to 2008.[12] The proposed acceptable sources of funds are reasonable.

125. The Agencies solicit comment on whether the definition of QRM should include servicing requirements.

AARP believes that servicing requirements should be a part of all mortgages, not only QRMs. We support the development of servicing requirements within the QRM definition and believe these requirements should also be applied to all residential mortgages.

143. The Agencies seek comment on the potential benefits and costs of the alternative approach, with a broader QRM exemption combined with a stricter set of risk retention requirements for non-QRM mortgages.

The alternative approach is an improvement over the original approach; however, it may still be too restrictive in terms of LTV and down payment requirements. The benefit of the alternative approach is that it will allow more creditworthy people to qualify for a lower-cost QRM mortgage. However, even at the 10 percent down payment level, approximately 9.4 percent of creditworthy borrowers would be shut out of the QRM market.[13] In terms of costs, the Agencies say they will introduce stricter risk requirements for non-QRM loans. These new requirements have not been specified, so it is not possible to quantify the costs. However, it can be deduced that non-QRM loans would cost more than under the original proposal.

In conclusion, AARP thanks you for this opportunity to comment. Should you have any questions, please feel free to contact Cristina Martin-Firvida on our Government Affairs staff at 202-434-6194.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director

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[12] Center for Responsible Lending, Community Mortgage Banking Project, Mortgage Bankers Association, Mortgage Insurance Companies of America, National Association of Home Builders, and National Association of Realtors, White Paper, QRM Harms Creditworthy Borrowers and Housing Recovery," April 13, 2011, page 4.

[13] Op. cit. Center for Responsible Lending, et al, page 4.