

January 30, 2020

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Secretary
Securities and Exchange Commission
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Anne E. Misback
Secretary
Board of Governors of the Federal
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Federal Housing Finance Agency
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Robert E. Feldman
Executive Secretary
Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 201410-0500

Cc: National Credit Union Administration

Re: QRM Review – Credit Risk Retention

Ladies and Gentlemen:

The undersigned organizations representing financial services, real estate finance, housing, consumer affairs, and civil rights appreciate the opportunity to respond to the notice of commencement of review of certain provisions of the Credit Risk Retention Rule¹ (“Notice”) issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Finance Agency, and the Department of Housing and Urban Development (collectively, the “Agencies”). We support the Agencies’ commitment to review the definition of “qualified residential mortgage” (“QRM”) and related provisions of the Credit Risk Retention Rule to consider, among other things, changes in the mortgage and securitization market conditions and practices as well as changes made to the “qualified mortgage” (“QM”) definition by the Consumer Financial Protection Bureau (“CFPB”). As explained further below, we ask the Agencies to delay the conclusion of this review until the CFPB finalizes its rule regarding the definition of QM.

¹ Codified at 12 C.F.R. pts. 43, 244, 373, and 1234; 17 C.F.R. pt. 246; and 24 C.F.R. pt. 267. References in this letter to the Credit Risk Retention Rule are to 12 C.F.R. pt. 43 for simplicity.

The CFPB initiated a rulemaking, through the issuance of an advance notice of proposed rulemaking (“ANPR”),² to address the upcoming expiration of the category of loans that obtain QM status due to their eligibility for purchase or guarantee by either Fannie Mae or Freddie Mac (“GSE Patch”). The GSE Patch is scheduled to expire on January 10, 2021 and the CFPB indicated its intent to allow cessation of the Patch on that deadline or “after a short extension, if necessary, to facilitate a smooth and orderly transition...”³ In the ANPR, the Bureau posed questions related to termination of the GSE Patch and other elements of the general QM definition. The CFPB comment period for the ANPR closed in September 2019, and it is expected that the agency will soon issue a notice of proposed rulemaking on QM.

As the Agencies are well aware, QM and QRM are linked by law. Specifically, the definition of QRM can be “no broader than” the definition of QM.⁴ Therefore, to ensure the Agencies’ review of QRM is comprehensive and meaningful, *we urge the Agencies to delay completing their review at least until the CFPB’s QM rulemaking is complete.*⁵

In 2014, the Agencies defined QRM as “a ‘qualified mortgage’ as defined in section 129C of the Truth in Lending Act (15 U.S.C. 1639c) and regulations issued thereunder, as amended from time to time.”⁶ The Agencies’ objectives in adopting this definition were to protect the marketplace and ensure broad access to mortgage credit. It is critical that investors are confident in the quality of mortgages underlying securitizations and that borrowers are able to obtain financing for sustainable loans. A broad coalition of lenders, insurers, real estate professionals, consumer advocacy organizations, and civil rights groups supported this definition and these objectives at that time. From all indications available, these objectives have been met thus far, and the mortgage finance industry is functioning well under this regime.

Whether the definitions of QRM and QM should continue to be the same or whether changes need to be made, however, are questions that cannot be answered at this time. It is only after the CFPB has made its final determination on the definition of QM, and following some period of experience under the new QM configurations, that the Agencies would be in a position to evaluate and seek comment on the market and consumer impacts of QM/QRM equivalency versus divergence of the definitions.

² *Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z)*, 84 Fed. Reg. 37155 (July 31, 2019).

³ *Id.* at 37155.

⁴ 15 U.S.C. § 78o-11(e)(4)(C).

⁵ The Credit Risk Retention Rule provides an opportunity for such a delay: “After completion of any review, but no later than six months after the publication of the notice announcing the review, unless extended by the agencies, the agencies shall jointly publish a notice disclosing the determination of their review.” 12 C.F.R. § 43.22(b).

⁶ 12 C.F.R. § 43.13(a).

Thank you for the opportunity to comment on this Notice. We stand ready to work with the Agencies on this important review.

Sincerely,

American Bankers Association
American Escrow Association
American Land Title Association
Asian Real Estate Association of America
Center for Responsible Lending
Community Home Lenders Association
Community Mortgage Lenders of America
Consumer Bankers Association
Consumer Federation of America
Credit Union National Association
Durham Committee on the Affairs of Black People
Housing Policy Council
Independent Community Bankers of America
Leading Builders of America
Manufactured Housing Institute
Mortgage Bankers Association
National Association of Federal Credit Unions
National Association of Hispanic Real Estate Professionals
National Association of Home Builders
National Association of Housing Cooperatives
National Association of Real Estate Brokers
National Association of REALTORS®
National Community Reinvestment Coalition
National Council of State Housing Agencies
National Fair Housing Alliance
National Housing Conference
National Housing Resource Center
National NeighborWorks Association
R Street Institute
Real Estate Services Providers Council, Inc
Securities Industry and Financial Markets Association
Structured Finance Association
The National Community Stabilization Trust
The Realty Alliance
U.S. Chamber of Commerce
U.S. Mortgage Insurers