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July 29, 2011

VIA OVERNIGHT MAIL & E-MAIL

Jennifer Johnson, Secretary
Board of Governors of the Federal Reserve System
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Federal Deposit Insurance Corporation
550 17th Street, NW
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Attention: Comments, Robert E. Feldman, Executive Secretary
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Securities and Exchange Commission
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Attention: Elizabeth M. Murphy, Secretary
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Deputy of the Treasury
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Federal Housing Finance Agency
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Attention: Alfred M. Pollard, General Counsel
RegComments@fhfa.gov

Re: Proposed Rule, Credit Risk Retention
Federal Reserve Docket No. R-1411; OCC Docket No. 2011-0002; FDIC RIN 3064-AD74; SEC File No. S7-14-11; FHFA RIN 2590-AA43; HUD Docket No. FR-5504-P-01

Dear Sir or Madam:

This letter responds to the request by the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance

Corporation, Securities and Exchange Commission, and the Federal Housing Finance Agency (collectively, the "Agencies") for comments on the currently proposed qualified residential mortgage (QRM) definition as it concerns the credit risk retention requirements provided under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

As you are aware, Section 941 of Dodd-Frank provides risk retention requirements to incentivize securitizers and originators to monitor creditworthiness and underwriting standards by requiring them to retain a portion of the credit risk in each asset held in a securitization. However, mortgages that meet the definition of a QRM are not subject to the risk retention requirements, thereby promoting securities and loan products viewed by the Agencies as less risky.

Under Dodd-Frank, the Agencies are charged with the task of developing a definition for QRM that takes into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. In addition, Dodd-Frank requires that the definition of a QRM be no broader than the definition of a "qualified mortgage" ("QM") under the Truth-in-Lending Act (TILA), as amended by Dodd-Frank.[1]

Unfortunately, in promulgating the proposed rule, the Agencies have excluded reverse mortgages from potential QRM status. The reasons cited by the Agencies for excluding reverse mortgages are twofold. Firstly, the overwhelming majority of reverse mortgages are insured by the FHA and are therefore otherwise exempt from the credit risk retention requirements[2]. Secondly, the extent to which a reverse mortgage may be classified as a

[1] Subsections 15G(e)(4)(A) and (C) of the Securities Exchange Act (15 U.S.C. 78a, *et seq.*), as added by Section 941 of the Dodd-Frank Act.

[2] As provided under Section 15G(e)(3)(B) of the Securities Exchange Act, as added by Section 941 of the Dodd-Frank Act, FHA-insured loans, which include HECM loans, are statutorily exempt from risk retention rules under Section 15G.

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QM is unknown and awaits determination by the Consumer Financial Protection Bureau (CFPB) . While understanding the practical difficulties cited by the Agencies, and as discussed more fully below, we strongly encourage coordination between the Agencies and CFPB to ensure that reverse mortgages, and reverse mortgage-like loans, as discussed below, may potentially qualify for QRM status.

These issues are of concern to many, but of particular concern to a client of our firm, a start-up company on the forefront of innovation in the reverse mortgage space. It has developed a patent pending application for a proprietary mortgage product that, although sharing many of the characteristics of a reverse mortgage, is not a reverse mortgage (as defined under TILA). Importantly, this product synthesizes attributes of both debt and equity and was developed during, and in response to, the current credit crisis as a means of better aligning consumer needs with the requirements of housing market investors.

Before delving into our specific comments concerning the proposed definition of QRM, allow me to begin by describing certain general trends and relevant facts for the purpose of highlighting how unintended consequences flowing from the proposal could dramatically and negatively impact a large and growing segment of the U.S. population, namely, our nation's seniors.

With the U.S. population living longer, health care costs rising, lending requirements more restrictive, and retirement accounts having dropped in value since 2007, there is significant and growing concerns over the ability of seniors to fund their retirement. Conversely, there are currently 34 million Americans aged 65 or older that own an estimated $3.5 trillion in home equity.[3] By 2030, that number is expected to more than double, to 71 million seniors, or 21% of the population.[4] Clearly, home equity release is a

[3] Robert Schafer, *Housing America's Seniors*, Joint Center for Housing Studies at Harvard University, 2000.
[4] Robert Schafer, *Housing America's Seniors*, Joint Center for Housing Studies of Harvard University. 2000.

source of supplemental income for funding the longevity of older Americans and needs to be recognized as an important part of the retirement solution.

The reverse mortgage market is presently built upon a single product - the FHA Home Equity Conversion Mortgage (HECM). Last year, more than 95% of all reverse mortgage transactions closed were HECMs.[5] Due to the lack of product alternatives serving this large and diverse demographic, the reverse mortgage market is only 2% penetrated.[6] Making matters worse, to keep the HECM program viable the principal limit factors[7] underpinning the HECM program have been progressively revised to reduce loan-to-value ratios[8] and, beginning in HUD's fiscal year 2011, annual mortgage insurance premiums were increased from 0.50% to 1.25%[9].

In short, seniors currently have few options beyond the HECM product, and the HECM is becoming more expensive, and offers a lower loan-to-value benefit. As a result, unit volume for HECMs dropped approximately 35% in 2010.[10]

Clearly, additional programs are needed to serve this market, including proprietary products that resolve the conflicting needs of senior homeowners desiring high loan-to-value ratios, and investors who require a more secure investment return. To fill this void, the private sector, as exemplified by our client, is exploring innovative new proprietary mortgage products that blend attributes of debt and equity in a manner not fully contemplated by TILA and Dodd-Frank.

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[5] Reverse Market Insight, Proprietary Data Repository.
[6] Reverse IQ Newsletter, Industry Data and Trends, May 17, 2011.
[7] Principal limit factors are the computational factors used to determine the amount of loan proceeds available to the borrower under the HECM program.
[8] See Mortgagee Letter 2009-34 (September 23,2009)
[9] See Mortgagee Letter 2010-28 (September 1, 2010)
[10] Reverse IQ Newsletter, Reverse Mortgage Retail Leaders, Reverse Market Insight, January 4, 2011,

In particular, our client has developed a proprietary product that is similar to a reverse mortgage, but doesn't meet the definition of a reverse mortgage under TILA. As you are aware, TILA Section 226.33, provides that a reverse mortgage is a non-recourse consumer credit transaction that does not require repayment of principal, interest or shared appreciation or equity (other than in the case of default) until (i) the consumer dies, (ii) the dwelling is transferred or (iii) the consumer ceases to occupy the dwelling as a principal dwelling. Therefore, a non-recourse mortgage made to an individual 62 years or older requiring interest-only periodic payments, but meeting all of the other requirements of a reverse mortgage under Section 226.33, including the repayment of principal and an equity interest in the property (in the form of contingent interest), only after the consumer dies, the dwelling is transferred or the consumer ceases to occupy the property as a principal dwelling (hereinafter a "reverse mortgage-like loan"), is not a reverse mortgage. Importantly, like a reverse mortgage, repayment of the reverse mortgage-like loan is intended to be repaid by the sale or liquidation of the collateral itself. In addition, and consistent with the non-recourse nature of the loan, the indebtedness under the reverse mortgage-like loan can never exceed the value of the collateral.

Unfortunately, this reverse mortgage-like loan would never qualify for QRM status under the current proposal, principally because of its balloon payment. Balloon payments are viewed by the Agencies under the current proposal as a risky product feature solely because of historical loan data associated with forward mortgages, not reverse mortgages, or reverse mortgage-like loans, where the loan is intended to be repaid by sale or liquidation of the collateral property. In fact, as noted earlier, reverse mortgages under Dodd-Frank may qualify as QRMs (although the current proposal excludes reverse mortgages from such qualification), provided they meet the definition of a QM under regulations to be promulgated by the CFPB. This is the case even though reverse mortgages, by definition, include a lump sum payment due at maturity.

For this reason, we strongly encourage the Agencies to create a definition for QRM that will allow not only reverse mortgages, but also reverse mortgage-like loans, to qualify for an exemption from the risk retention provisions of Dodd-Frank. Requirements contained in the current proposal, such as minimum down payment, debt-to-income ratios and other factors bearing upon the borrower's ability to repay, have little or no relevance to loans where recourse is limited to the collateral and the source of repayment is intended to be the sale or liquidation of the collateral itself. Moreover, since investors and borrowers know and understand the limitations on recourse and the source for repayment, these types of loans do not present the kinds of risks the current proposal was designed to address.

Rather than categorically dismissing reverse mortgages, and reverse mortgage-like loans from qualification as QRMs, we respectfully propose the following criteria as appropriate for reverse mortgages, and reverse mortgage-like loans:

- Creditors underwrite such loans to ensure the consumer's ability to pay applicable taxes, insurance and assessments affecting the collateral property based on income and financial resources that are verified and documented;

- Any required periodic payments under the loan are properly underwritten to ensure the consumer's ability to make such payments based on income and financial resources that are verified and documented, taking into account applicable taxes, insurance and assessments affecting the collateral property;

- No penalty for prepayment is permitted; and

- Consumers receive mandatory counseling from an FHA-approved independent loan counselor prior to loan origination.

Apart from QRM, Dodd-Frank expressly provides that the Agencies may grant any other total or partial exemptions to the credit risk retention standards so long as the exemptions help ensure quality underwriting standards, encourage risk management practices by securitizers and originators of assets, improve consumer and business access to credit on reasonable terms and are otherwise in the public interest[11]. As demonstrated in our discussion above, the availability of responsible, affordable credit that meets the special needs of older Americans is not only a problem today, but one that will only grow more acute as baby boomers seek retirement at accelerating rates in coming years. The inability of reverse mortgages and reverse mortgage-like loans to qualify for exemption to the credit risk retention provisions will impair the development of a securitization market for these products and only increase over-reliance upon the HECM product. Clearly then, the Agencies have both the authority and, we suggest, the responsibility, to take steps in their rulemaking to permit reverse mortgages and reverse mortgage-like loans to qualify as QRMs, provided they meet appropriate criteria, such as the criteria proposed above.

Finally, our client encourages coordination between the Agencies and the CFPB to ensure that standards for QRMs and QMs are largely the same. Since both proposals serve substantially similar purposes, we believe the criteria for each such be significantly similar.

We urge the Agencies, in exercising their broad rule-making authority, to avoid rote application of a construct under Dodd-Frank premised on current forward mortgage products and the existing forward mortgage marketplace. To do otherwise risks the still-born birth of innovative proprietary credit products, like that of our client's reverse mortgage-like product, having great social utility and potentially better meeting the needs of consumers in underserved markets.

[11] See Section 941(b) of Dodd-Frank adding Section 15G(e) to the Securities Exchange Act of 1934.

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We appreciate consideration by the Agencies of these comments with respect to this important proposal. Should questions about these comments arise, or additional information be helpful, please do not hesitate to contact the undersigned, at 949.754.3010 or at schiffman@wbsk.com.

Very truly yours,

Joel A. Schiffman

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