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500 New Jersey Ave., NW
Washington, DC 20001-2020
Ph. 202-383-1194 Fax 202-3837580
www.REALTOR.org

October 29, 2013

The Honorable Shaun Donovan
c/o Regulations Division
Office of General Counsel
Department of Housing and Urban Development
Washington, DC 20410-0500

Docket No. FR 5707-P-01
Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages
Transmitted electronically at www.regulations.gov

Dear Mr. Secretary:

I am writing on behalf of the over one million members of the National Association of Realtors® (NAR) to comment on HUD's proposed rule to define the term "qualified mortgage" for purposes of mortgage loans insured or guaranteed by the Department, in the context of the ability-to-repay (ATR) requirements of the Dodd-Frank Act. NAR generally supports the proposed rule.

NAR is America's largest trade association, including our eight affiliated Institutes, Societies and Councils, five of which focus on commercial transactions. Realtors® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of Realtors®.

Based on HUD's review of its mortgage insurance and loan guarantee programs, it has determined that all of HUD's single family residential mortgage and loan products are qualified mortgages because they exclude risky features and are structured so borrowers are determined able to repay the loan. The rule, however, proposes to adopt several features based on those in the final ATR rule issued by the Consumer Financial Protection Bureau (CFPB). Single family mortgages insured under Title II of the National Housing Act would be subject to CFPB's 3 percent cap on points and fees. In addition, the proposed rule would establish two categories of qualified mortgages: safe harbor and rebuttable presumption mortgages. Safe harbor mortgages have lower costs and are considered to be the least risky. They are presumed conclusively to have met the ability-to-repay requirements. Rebuttable presumption mortgages have higher costs and receive a rebuttable presumption that a borrower may more easily challenge where there is a question after loan closing about the borrower's ability to repay.

HUD proposes to designate all home improvement, Indian housing, and Native Hawaiian mortgages and loans to be safe harbor qualified mortgages. For its vastly larger program, the single family mortgage program under Title II, HUD would adapt the definition used by CFPB to determine whether a mortgage is a higher cost mortgage, in which case it would not qualify as a safe harbor mortgage, but instead qualify as a rebuttable presumption mortgage. Under the CFPB final rule, a qualified mortgage is eligible as a safe harbor mortgage if the annual percentage rate (APR) does not exceed the average prime offer rate (APOR) by more than 1.5 percentage

points. A qualified mortgage is a rebuttable presumption mortgages if the APR does exceed the APOR by more than 1.5 percentage points. For determining whether an FHA mortgage is a safe harbor qualified mortgage or a rebuttable presumption qualified mortgage, HUD proposes to modify CFPB's APOR test. If the APR for an FHA mortgage does not exceed the monthly FHA mortgage insurance premium plus 1.15 percentage points, it would qualify as a safe harbor mortgage. If the APR does exceed that total amount, it would qualify as a rebuttable presumption mortgage.

Also, the 3 percent cap on points and fees applies to both categories of mortgages under Title II. This approach will avoid the need for HUD to consider amending the APOR test in the definition of qualified mortgage each time HUD determines to adjust the annual FHA mortgage insurance premium.

Impact of Proposed Rule

NAR's support for the proposed rule is largely based on HUD's determination that the proposed rule would make the Title II program more attractive to lenders and at the same time benefit borrowers by making mortgage credit more readily available. The preamble states that 74 percent of all Title II mortgages qualify for the safe harbor under the CFPB final ATR rule and would continue to do so under the proposed HUD rule. Even better in terms of promoting availability of mortgages for consumers under the FHA program, 19 percent of Title II loans that are considered rebuttable presumption qualified mortgages under the CFPB final rule would qualify as safe harbor qualified mortgages under HUD's proposed rule. HUD estimates that 7 percent of Title II loans would not qualify as qualified mortgages under either the CFPB rule or the HUD rule, because they would exceed the 3 percent points and fees limit, making them ineligible for FHA insurance. The economic analysis in the preamble posits that lenders will have an incentive to keep their costs low to minimize the number of loans that would be ineligible for FHA insurance, in light of lower compliance and litigation costs under the FHA program that HUD expects to result from its proposal. In fact, it believes that lenders are likely to reduce the points and fees to 3 percent or less in more cases, further minimizing the impact even on the 7 percent. NAR will be interested to learn whether the HUD estimates prove accurate once the rule becomes final. If the APOR or 3 percent cap tests turn out to have onerous effects on first-time homebuyers and other potential FHA borrowers, we trust HUD will reconsider the rule and take action to eliminate such unintended consequences.

Discrimination against Businesses with Affiliates

As NAR has commented to CFPB in connection with its ATR rulemaking, the definition of points and fees discriminates against lenders with affiliates for no apparent reason. We urge HUD to eliminate this anomaly, in consultation with CFPB, so the uniformity you seek can be achieved.

The definition of points and fees include charges paid to affiliated title companies (but not unaffiliated). Under the current definition, consumers are, in effect, forced to use the services of a non-affiliated title company to avoid having their mortgage exceed the 3 percent cap. Any loan with points and fees above the 3 percent cap would be ineligible for FHA insurance. We ask that you add an affiliate exception, using your broad TILA authority, because it would maximize consumer access and choice in mortgage providers. We see no disadvantage for consumers. RESPA already protects consumers from potential abuse by prohibiting kickbacks and unearned fees among settle service providers. Allowing consumers to choose to use settlement services of affiliated providers is not likely to change their overall costs, though it is likely to streamline and simplify the process. In a December 2010 Harris Survey of recent and prospective buyers, respondents said that using affiliates saves them money (78%), makes the home buying process more manageable and efficient (75%), prevents things from "falling through the cracks" (73%), and is more convenient (73%) than using separate services.

The item most likely to risk tipping the cost of points and fees above the 3 percent cap is title charges. The title industry is regulated at the state level and competitive. The risk that consumers would pay a non-market rate for title insurance to an affiliated title company, as opposed to an unaffiliated firm, is extremely small or non-existent because regulation and RESPA.

By revising the definition of points and fees to exclude any title charges, provided that are bona fide and reasonable (irrespective of affiliate status), you (and CFPB) would (i) maintain a competitive marketplace regardless of the lender's business structure, (ii) prevent the risk some lenders may withdraw from mortgage lending, (iii) assure that any loan with

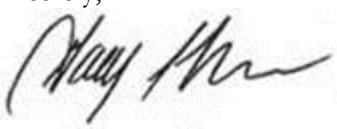
title charges that are not bona fide and reasonable does not qualify for FHA insurance, and (iv) make it feasible for consumers to have the choice to obtain title insurance from affiliated title companies.

Treatment of Escrows for Taxes and Insurance

With respect to amounts in escrow for taxes and insurance, there is considerable confusion about whether to include these amounts in the definition of points and fees. These are just pass-through amounts that have no risk of imposing excessive costs on consumers, and they should not be included. CFPB has given mixed signals, especially with regard to escrow amounts for insurance. We urge that you (i) clarify that you will interpret the definition of points and fees to exclude these and (ii) encourage CFPB to clarify it will also exclude escrows for the loans that will be covered by its final ATR rule when it goes into effect in January 2014.

If you have any questions or would like to meet to discuss these concerns, please feel free to contact Ken Trepeta, NAR's Director for Real Estate Services, at 202.383.1294, or ktrepeta@realtors.org.

Sincerely,



Gary Thomas
2013 President, National Association of REALTORS®