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October 30, 2013

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Honorable Shaun Donovan
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Mr. Thomas J. Curry
Comptroller
Office of the Comptroller of the Currency
Washington, DC 20219

Re: Credit Risk Retention Proposed Rule
Transmitted electronically to

- OCC: (Docket No. OCC-2013-0010)
- Federal Reserve: (Docket No. R-1411)
- FDIC: (RIN 3064-AD74)
- SEC: (File Number S7-14-11)
- FHFA: (RIN 2590-AA43)
- HUD: (2013-0090-0001)

Ladies and Gentlemen:

I am writing on behalf of the one million members of the National Association of REALTORS® (NAR) to submit our comments on the proposed definition of a Qualified Residential Mortgage (QRM) in the Credit Risk Retention proposed rule. [1]

NAR appreciates that regulators have re-proposed the rule, and in defining a QRM as any mortgage that meets the Qualified Mortgage (QM) ability-to-repay standard of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), have provided consistency for lenders to offer safe and financially prudent mortgages while also ensuring creditworthy homebuyers have access to safe mortgage financing with lower risk of default. NAR believes that the proposed alternative "QRM+" definition is unduly narrow and is not necessary to assure safe and sound mortgage lending. Traditional residential mortgages, without risky features such as teaser rates and balloon payments, coupled with sound underwriting and documentation of income and assets, perform well with relatively low default rates. REALTORS® believe that imposing a minimum 30% down payment requirement, stringent debt-to-income ratio requirements,

[1] 78 Fed. Reg. 57928 (September 20, 2013).

and rigid credit standards will deny millions of creditworthy Americans access to the lowest cost and safest mortgages. The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. 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®.

I. LEGISLATIVE AND REGULATOR HISTORY

Section 941 of the Dodd-Frank Act adds a new section 15G to the Securities Exchange Act of 1934 that requires securitizers to retain 5% of the credit risk of a residential mortgage asset that it sells to a third party. Section 15G(e)(4) requires the regulators to define and exempt QRMs "taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—"

i. documentation and verification of borrower's financial resources;
ii. standards related to residual income and debt-to-income ratios;
iii. features that mitigate payment shock;
iv. mortgage guarantee insurance or other insurance or credit enhancement, "to the extent such insurance or credit enhancement reduces the risk of default;" and
v. prohibiting or restricting high risk features, including balloon payments, negative amortization, prepayment penalties, and interest-only mortgages.

The legislative history of QRM makes clear that the Senate sponsors of the QRM amendment intended a broad exemption. In the Senate debate, Senators Corker and Isakson expressed concern that risk retention would "shut down the securitization process and make less credit available."[2] Even an amendment setting a 5% down payment requirement, offered by Senator Corker, failed because, in the words of Senate Banking Committee Chairman Dodd: "[t]he amendment puts in government-dictated, hard-wired underwriting standards that would have very serious consequences . . . for first-time homebuyers, minority home buyers, and others who are seeking to attain the American dream of home ownership . . . ."[3] During the debate, Senator Dodd also alluded to the many mortgage programs that require less than a 5% down payment and noted "[t]hey are performing well, and have done so in the past. And we want low- and moderate-income families to go to banks and get loans, qualified low- and moderate-income people . . . . We do not want to simply shut them off to nonprofits. We want to get them into the financial mainstream."[4] The Senate rejected the Corker amendment by a vote of 42-57.[5]

The debate on the QRM amendment offered by Senators Landrieu, Isakson, Hagan, and others makes Congressional intent even clearer. Senator Isakson explained that the 5% risk retention would not work and that a QRM exemption was needed or there "would be no mortgage loans."[6] No one can know for sure whether Senator Isakson is right that there will be no non-QRM loans, but what is clear is that he wanted to encourage lenders to make safe and sound loans that qualify for the QRM exemption. The Senator's view was that "the only risk retention that will be required is when someone is making a bad loan, which means people will stop making bad loans."[7] Senator Isakson wanted to return to the days of sound underwriting, but he recognized that "the way things used to work"[8] included mortgage insurance where down payments were less than 20%. No Senators spoke against the Landrieu-Isakson-Hagan amendment, which was enacted as part of the Dodd-Frank Act, without any amendment affecting this analysis.

This statutory language, bolstered by the legislative history, makes clear that the QRM definition was not intended to be a narrow slice of extremely high-quality mortgages, but a broad slice of mortgages—the more the better—to maximize the availability of safe mortgages at a reasonable cost for creditworthy borrowers.

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[2] 156 Cong. Rec. S3514 (May 11, 2010).
[3] 156 Cong. Rec. S3518 (May 11, 2010).
[4] 156 Cong. Rec. S3520 (May 11, 2010).
[5] 156 Cong. Rec. S3574 (May 12, 2010).
[6] 156 Cong. Rec. S3576 (May 12, 2010).
[7] Id.
[8] Id.

(A) INITIAL PROPOSED RULE

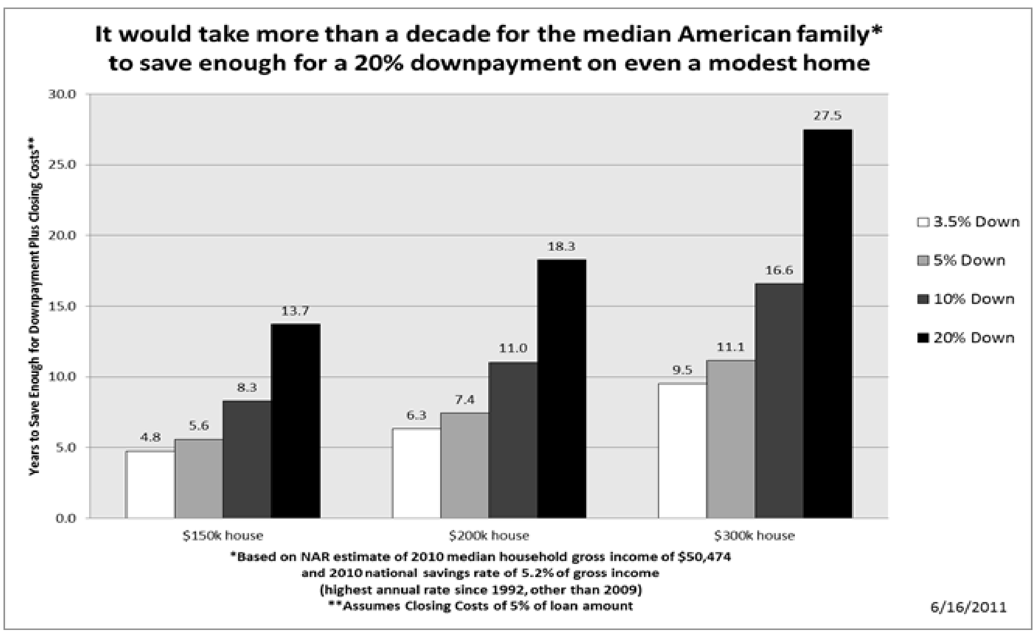
On April 29, 2011, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (the Fed), Federal Deposit Insurance Corporation (FDIC), Securities and Exchange Commission (SEC), Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development (HUD) (collectively, the Regulators) jointly issued a notice of proposed rulemaking to implement Section 941 of the Dodd-Frank Act regarding credit risk retention including the QRM. The proposed regulation defined QRM narrowly by including among the criteria a minimum 20% down payment requirement (without allowing a lower down payment coupled with mortgage insurance), low debt-to-income ratios (28%/36%), tight credit history standards, a 3% limit on total points and fees, and mandatory appraisals (including for refinancings).

NAR strongly opposed the rule stating that it was inconsistent with the terms of the statute or its legislative history. Along with being inconsistent with the standards set forth for risk retention in title IX of the Dodd-Frank Act, the Regulators unnecessarily defined the QRM exemption from the risk retention requirements to include only a narrow slice of the mortgage market.

As originally proposed, the rule would have made homeownership more expensive or unattainable for millions of creditworthy borrowers, especially first time home buyers and members of underserved communities and would have jeopardized the fragile housing market recovery.

At the time, NAR estimated it would take more than a decade for a family with a median household income to save the required 20% down payment for a $150,000 home (lower than the current median). Even a 10% down payment would take a family more than eight years to save. Exhibit 1 shows at a glance how difficult it will be for families to save for large down payments.

EXHIBIT 1



(B) RE-PROPOSED RULE

On August 28, 2013, the six Regulators published a revised proposed rule proposing a "preferred" definition that would equate QRM with the soon-to-be implemented "ability-to-repay" Qualified Mortgage (QM) rule and underwriting standard established by the CFPB.[9]

The Regulators also requested comment on an alternative "QRM+" (the Alternative) approach that would require borrowers to have a 30 percent down payment and stringent credit requirements in addition to meeting QM qualifications as an alternative to the "preferred" QRM definition.

[9] Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407

Not only would the Congressional objective of reducing excess risk-taking be achieved by adopting the much broader "preferred" definition of QRM, a broad definition is consistent with ensuring affordable, safe and sound lending by creditworthy borrowers. The narrow Alternative definition is inconsistent with the statutory standard that the exemption should be both "in the public interest and for the protection of investors."[10] The public interest is not served by denying millions of potential creditworthy borrowers access to the safest and most affordable mortgages. The law also requires the regulators to establish exemptions consistent with improving "access of consumers . . . to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors."[11] The statutory standards demonstrate Congressional focus on the need to balance risk retention with the need to provide mortgage credit for consumers, yet a majority of first-time buyers, borrowers of color, and the underserved would not have access to the most affordable mortgage financing should the Regulators limit the availability of QRM coverage to a small fraction of mortgage borrowers under the Alternative definition.

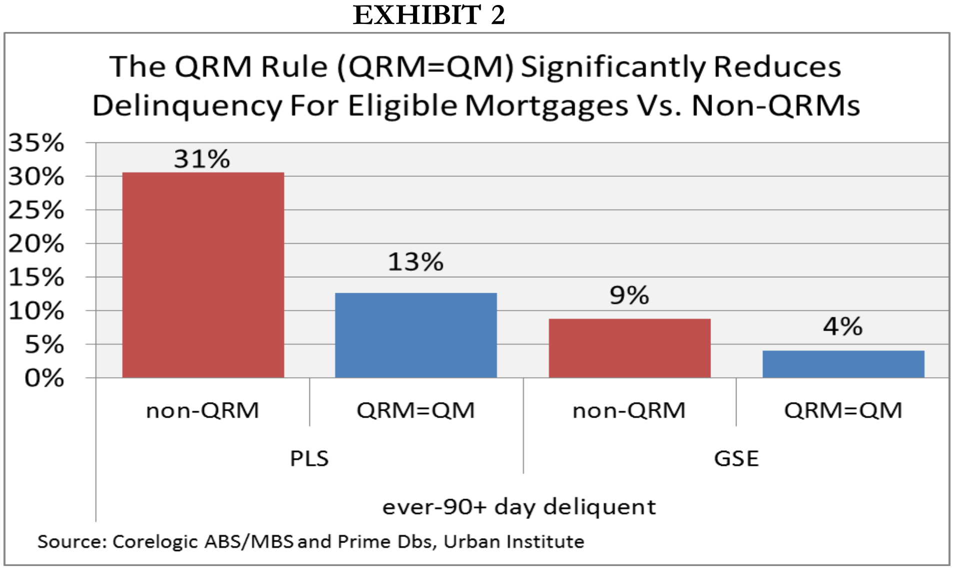
II. REGULATORS SHOULD BASE THE DEFINITION OF QRM ON A STRONG DEFINITION OF QM

REALTORS® strongly support the Regulators "preferred" proposal. The regulation of the mortgage lending industry is becoming so complex that it threatens to weaken the system, instead of curing abuses. By aligning the definition of QRM with the definition of QM, regulators will minimize any additional confusion and uncertainty in the mortgage finance space.

Designed to ensure a borrower's ability-to-repay, the QM standard will assure a safe and sound mortgage loan that does not include questionable loan features most closely associated with the housing crisis such as negative amortization and interest-only payment features, but does require documentation and underwriting requirements (borrowers cannot have debt-to-income ratios above 43 percent unless it meets Fannie Mae, Freddie Mac, or Federal Housing Administration underwriting criteria for seven years or until GSE reform). Additionally, borrowers must provide documentation of their income and assets used to qualify for a loan, and creditors must verify this and other important borrower qualifications. Down payment and credit history standards that exclude a large proportion of the population were not incorporated into the rule. While the law requires that the definition of QRM not be broader than the definition of QM, there is no reason why it should not be the same. A QRM/QM mortgage should be a mortgage for which risk retention is not needed for investor security.

In synchronizing both definitions, the revised rule encourages safe and financially prudent mortgage financing without adding undue regulatory burden on the mortgage finance process. The "preferred" approach would encourage high quality underwriting and focus on retention of risk by securitizers of the loan products that played a significant role in the housing crisis. The new rules will help ensure rigorous and effective underwriting while also providing creditworthy homebuyers access to safe mortgage financing with lower risk of default as illustrated below.

EXHIBIT 2



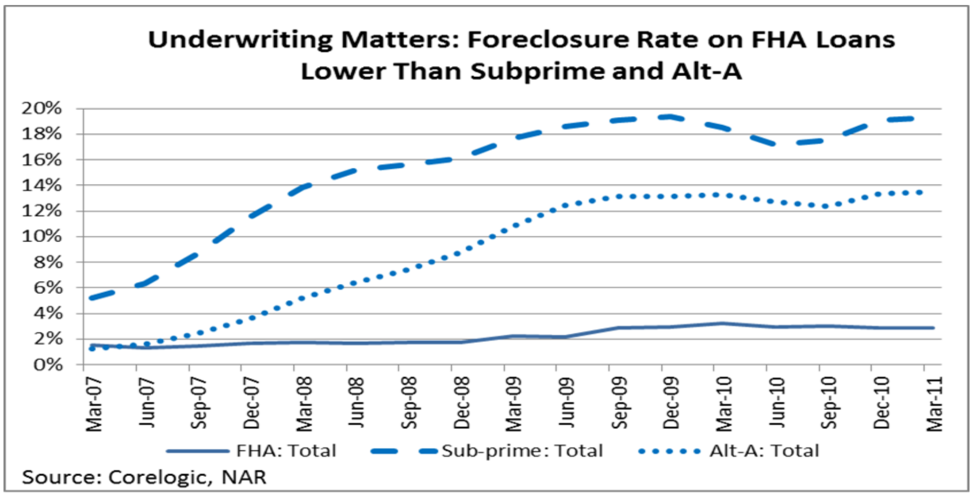
[10] Section 15G(c)(1)(G) of the Securities Exchange Act of 1934.

[11] Section 15G(e)(2) of the Securities Exchange Act of 1934.

The chart above reflects a historical analysis by researchers at the Urban Institute[12] of mortgages which would have met the QM standards, to those that did not. The "ever 90-day delinquency rate" (loans that have ever been 90 days or more delinquent) for all loans in private label securities that did not meet the re-proposed QRM standard was 30.6 percent whereas the delinquency rate for purchase and refinance loans that met the new QRM proposal was nearly two-thirds lower[13]. The chart also demonstrates that loans purchased by Freddie Mac and Fannie Mae that met the re-proposed QRM standard had default rates of 4.1 percent as compared to 8.7 percent for mortgages that did not qualify for QM status. The study's authors point out that using an alternative measure of performance such as the 180-day delinquency rate or a measure of default would more accurately portray borrower behavior. The delinquency rates for PLS and GSE mortgages originated over this same period that fell 180 days or more delinquent were 7.87% and 1.43%, respectively.

Aligning the QM definition with the QRM definition removes the risky product features and low or no-documentation lending that are closely correlated with increased probability of default without excluding those unable to afford a high down payment. Although data show that the risk of default increases as down payments decrease, this does not necessitate the inclusion of down payments in QRM. FHA allowed low down payments but because it required strong underwriting, including documentation, its portfolio has performed far better than subprime and Alt-A loans without the same sound underwriting and loan characteristics, as illustrated in Exhibit 3.

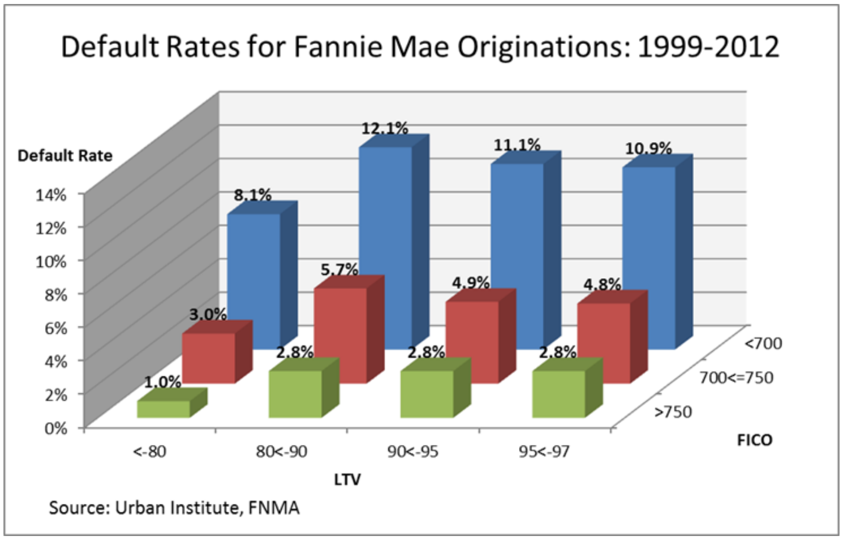
EXHIBIT 3



12 See blog post by Laurie Goodman and Ellen Seidman and Jun Zhu. "QRM, Alternative QRM: Loan default rates." http://blog.metrotrends.org/2013/10/qrm-alternative-qrm-loan-default-rates/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+MetrotrendsBlog+%28MetroTrends+Blog%29

13 To account for prepayment penalties, the authors of the Urban Institute's study filtered from their QM definition mortgages with prepayment penalties incurred more than three years after origination, but they were unable to screen those mortgages with penalties that exceeded the limit of 2 percent of the amount prepaid. Likewise, data limitations precluded their ability to screen hybrid ARM products for a maximum rate reset in the first 5 years. Mortgages with these features may have been screened from the QM definition for other reasons, but some were likely included and thus estimates for delinquency rates should be considered conservative.

EXHIBIT 4

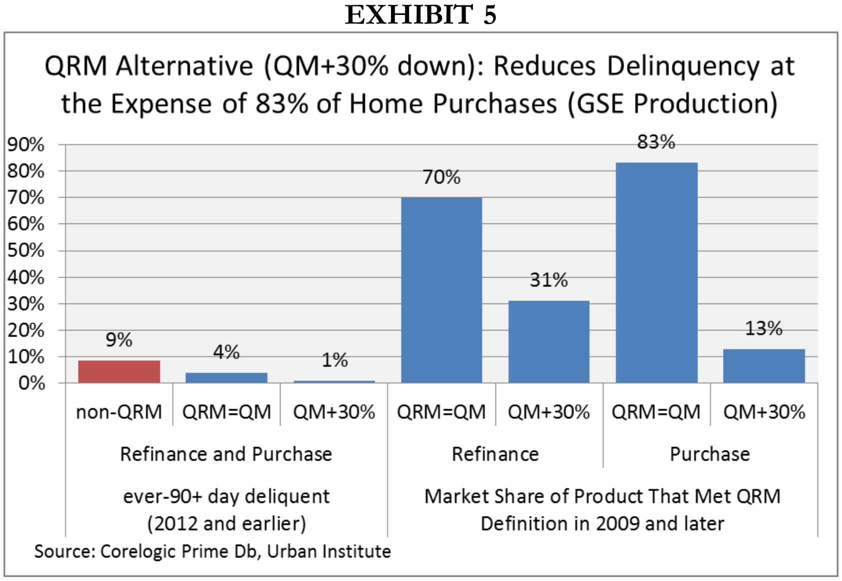


The relationship between LTV and performance has a long history in academic research and is well understood by the market. Risky product features, on the other hand, are poorly understood and their opaque nature prevents their predictability (e.g. low/no documentation). The "preferred" QRM definition acknowledges these facts which demonstrate that sound underwriting and product features, like documentation of income and mortgage type, have a larger impact on reducing default rates than high down payments.

III. PROPOSED ALTERNATIVE DEFINITION OF QRM IS NOT NECESSARY TO ENSURE SAFE AND SOUND MORTGAGES

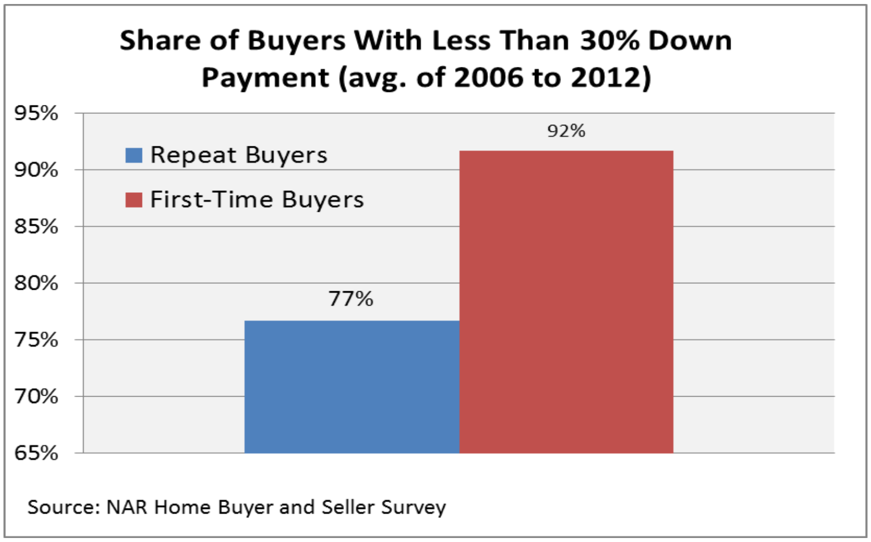
The proposed Alternative definition of QRM, which would require a 30% down payment, is unduly narrow and is not necessary to assure safe and sound mortgage lending. The proposed Alternative is a much more restrictive approach to defining a QRM loan and seems to be based on the opinion that the QRM definition should be extremely narrow and allow only extremely safe mortgages to be exempt from risk retention. As discussed above, this was not the intent of Congress and the proposed policy has no factual basis. Traditional mortgages, without risky features such as teaser rates and balloon payments, coupled with sound underwriting and documentation of income and assets, perform well with relatively low default rates.

EXHIBIT 5



REALTORS® believe that imposing a minimum 30% down payment and rigid credit standards will deny millions of Americans access to the lowest cost and safest mortgages. As indicated in exhibit 5, data indicates that adding the Alternative's requirements of a 30 percent down payment and stringent credit requirements to the QM qualifications on loans purchased by the GSEs, would significantly reduce the portion of borrowers that would qualify for the QRM exemption. When evaluating the market share of purchase mortgages originated after 2009, the QRM share of the market falls from 83% under the "preferred" definition to 13% under the Alternative. Though the narrow Alternative would reduce the risk of default for QRMs, the requirements are simply too restrictive to be practical, particularly for low- and moderate-income families, first-time homebuyers, and homebuyers in high-cost areas

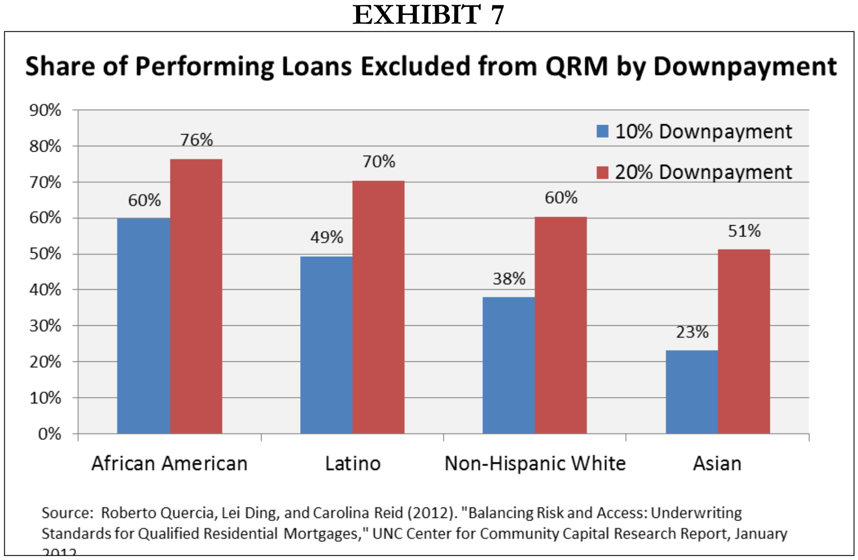
EXHIBIT 6



The proposed QRM definition would also have an unsettling impact on the ability of first-time buyers to enter the market. Between 2006 and 2012, approximately 92 percent of first time home buyers put down less than 30 percent. Though a larger percentage of repeat buyers were able to use the proceeds from previous home sales in their subsequent purchase, fewer eligible first-time buyers would lower demand and undermine the ability of current homeowners to sell and trade-up to a larger home for a growing family.

Focusing the QRM exemption on underwriting factors that do not significantly improve loan performance means millions of families will fail to qualify for a QRM mortgage and will have to pay higher rates and fees for a non-QRM mortgage, if they are even able to qualify. As illustrated in exhibit 7, a review of performing loans demonstrates a large number of performing loans would be excluded by a 20 percent, and even a 10 percent. downpayment. The inability to attain financing would be disproportionately borne by borrowers of color. Additionally, the impact would only increase with a 30% down payment.

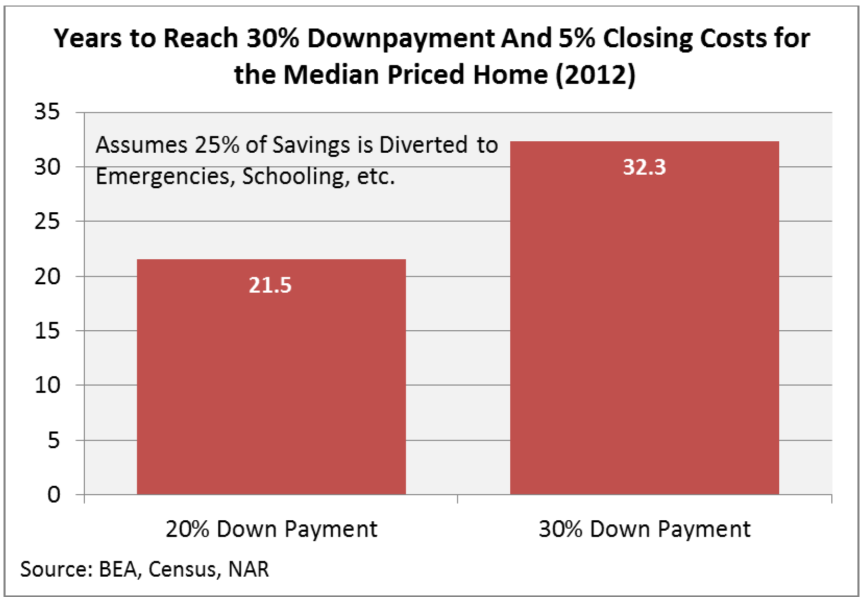
EXHIBIT 7



The Alternative's down payment requirement would narrow the field of affordable financing options for most Black and Hispanic borrowers to FHA and VA loans. As a practical matter, a narrow QRM exemption creates a permanent bar to homeownership for creditworthy families unless they are able to obtain an FHA or, while Fannie Mae and Freddie Mac are in conservatorship, a GSE loan. A shift in production to the FHA would undermine the administration's goal of reducing its foot print, while a simultaneous reduction of the FHA would leave many qualified and sustainable borrowers in the cold.

Should the continued rise of student loan debt impact the ability of responsible borrowers to save for a down payment, those borrowers will be unable to access the most affordable mortgage options. Though a vast majority of student loan borrowers have been responsible and diligent in making their student loan payments, the ability of these borrowers to save for many of the same reasons previous generations have including emergency savings, medical expenses, and down payments may become more difficult.

EXHIBIT 8



Support for Treatment of Enterprises

Fannie Mae and Freddie Mac (the government sponsored enterprises or GSEs) fully guarantee the timely payment of principal and interest on the mortgage-backed securities they issue, and are exposed to the entire credit risk of the mortgages that collateralize those securities. Since September 2008, both GSEs have been operating under the conservatorship of FHFA. As conservator, FHFA has assumed all powers formerly held by each GSE's officers, directors, and shareholders. Under the "preferred" proposed, the guaranty provided by a GSE while in conservatorship will satisfy the risk retention requirements of the GSEs.

NAR recognizes the need for private capital participation to reduce the federal government's financial support of the housing sector if the housing finance system is to right itself. However, in today's unstable economic conditions, private capital has retreated from the market, requiring the increased and continued participation of entities that provide financing in the marketplace regardless of economic conditions NAR supports the proposed rule's treatment of GSE securities. NAR believes that the agencies should remain cautious implementing any regulations, including risk retention, which would impede a recovery in housing or the overall economy. The GSEs continue to play a crucial role in providing readily available financing for consumers during the current economic downturn and are critical to maintaining a liquid residential mortgage market, throughout the nation, that serves a wide range of borrowers, including qualified low- and moderate-income families, while private capital remains on the sidelines. Imposing risk retention requirements on the GSEs would result in unnecessarily higher mortgage interest rates for millions of consumers and further delay the housing recovery as it regains its footing after the worst economic downturn since the Great Depression.

HIGHER COSTS FOR NON-QRM MORTAGES AND THE IMPACT

The regulators have suggested that risk retention will result in a cost of up to a 30 basis point increase in rates for non-QRMs compared to exempt QRMs, seeming to suggest this is a minimal cost. As previously shown, this cost would be would be passed onto otherwise creditworthy consumers under the proposed alternative, adding up to billions of dollars on an annual basis while simultaneously constraining consumer spending and homeownership. This estimate may be conservative, however, as the example is based on a pool of prime borrowers and the required yield on equity of 11% to 15% may be lower than required by the market. The short term impact of the proposed Alternative QRM could be consumers opting for a cheaper 100 percent guaranteed FHA alternative or, until the GSE loan exemption is removed, GSE loans. However, these substitutions again run contrary to the objectives of policy makers seeking to restore private capital and reduce dependence on federal guarantees in the mortgage market (as noted in more detail in the next section). As a result, when policies designed to shrink the FHA and GSE footprint are implemented, the full adverse effects outlined here of the narrow QRM will be felt in the housing market as well to the greater economy.

It is not clear that the private sector has the ability or desire to absorb the GSEs share of the securitization market as the GSE role is reduced over coming years. If it does not, and the role of FHA is reduced as well, the gap that remains would likely leave those least able to save or those with weaker but still good credit with limited access to mortgage credit. This process would be exacerbated during periods of weakness in the economy or housing market as lenders restrict credit to borrowers perceived as safer because they meet the QRM definition or are close to it.

CONCLUSION

NAR appreciates the opportunity to comment on this rule and commend your efforts to address comments raised in response to the initial proposal. The "preferred" approach will ensure that sustainable mortgage credit is accessible to the broadest possible segment of responsible borrowers. I can assure you, REALTORS® understand the importance of avoiding unsustainable lending policies and believe that the Regulators "preferred" approach promotes responsible homeownership for consumers and is a return to safe and sound mortgage lending.

We believe that the Alternative approach proposed by the Regulators is part of a regulatory over-correction in response to past abuses. Under the Alternative, otherwise creditworthy borrowers would be forced to pay higher rates simply because they would be unable to meet the more restrictive standards of the Alternative proposal. We remained concerned that a QRM definition that requires a large down payment will have a detrimental effect on the housing market and broader economy, particularly if such a policy does not produce increased private sector lending in the mortgage market.

Uncertainty and uneven regulations in this environment runs the risk of reversing progress being made in the housing and mortgage markets, and more concerning, the economy as a whole. In a rulemaking earlier this year, the Federal Reserve sighted that mortgage regulations have changed the potential risk of holding mortgages and was mindful of the cumulative effect regulations would have on residential mortgage credit availability from QRM and other rules. While housing continues to face many headwinds such as higher interest rates and affordability challenges, maintaining a continued recovery will be key to boosting economic and job growth. While aligning the QRM definition with rules designed to ensure a borrower's ability-to-repay their mortgage may moderately increase the delinquency rate from the Alternative, NAR believes this is a reasonable trade-off to avoid potentially excluding millions of creditworthy Americans from the opportunity for homeownership.

If you have any questions, please feel free to contact me or Charlie Dawson, NAR Senior Policy Representative for Financial Services, 202.383.1117 or cdawson@realtors.org, or Ken Fears, NAR Director, Housing Finance and Regional Economics, 202.383.1066 or kfears@realtors.org.

Sincerely,

Gary Thomas
2013 President, National Association of REALTORS®