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Before the U.S. House of Representatives
Subcommittee on Capital Markets and
Government Sponsored Enterprises

"Understanding the Implications and Consequences of the Proposed Rule on Risk Retention"

April 14, 2011

Good afternoon Chairman Garrett, Ranking Member Waters, and members of the subcommittee. Thank you for the invitation to discuss the very important issue of reforming the performance of the secondary market for residential mortgages, where reckless practices fueled reckless lending and a foreclosure crisis that has impoverished families, destroyed neighborhoods, and triggered a global financial crisis.

I serve as Senior Policy Counsel at the Center for Responsible Lending (CRL), a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth. CRL is an affiliate of the Center for Community Self-Help ("Self-Help"), a nonprofit community development financial institution. For thirty years, Self-Help has focused on creating asset building opportunities for low-income and minority families, primarily through financing safe, affordable home loans that have enabled thousands of families to build assets for the first time. In total, Self-Help has provided over $5.6 billion of financing to 64,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

I. Introduction and Summary

You have asked us today to consider the implications and consequences of the proposed rule on risk retention for securitized assets. We are most concerned about the impact of the proposed rule on the market for residential mortgages. In our view, the proposed rule would squander an opportunity to ensure that well-structured, responsibly underwritten and appropriately serviced mortgage loans become widely available to all credit-worthy families. If the private label securities market makes a substantial comeback, it would relegate many creditworthy families to second-tier, less sustainable mortgage loans. Access to responsibly structured, properly serviced loans is particularly important for families who lack the wealth to sustain payment shock or hedge against interest rate risk.

For this reason, we agree with the agencies that the "Qualified Residential Mortgage" (QRM) exception to the risk retention rules should apply only to loans whose terms are responsible and sustainable, and that are underwritten to ensure the borrower's ability to repay based on documented income. Where we differ with the agencies is in our strong belief that such loans should be broadly available to credit-worthy families. Ideally, these should be the loans of choice for most borrowers. Loans that do not meet these standards should remain available, but should be the exception, not the dominant product, and should be subject to strict regulatory oversight to address abuses. We believe that was the intent of Congress.

The proposed rule would do exactly the opposite of what we here suggest. It would create a category of responsible mortgages, but make them available to only a small proportion of creditworthy families. This is the result of down-payment, debt to income and credit history requirements so extreme they would exclude much of the middle class, along with large numbers of credit worthy families of color and low- and moderate-income borrowers, from access to QRMs

Respectfully, we believe that the proposed approach is both a bad idea and a missed opportunity and should be revised.

It is a bad idea for two reasons. First, a 5 percent risk-retention requirement for loans outside the QRM definition will come at a cost that will be passed onto borrowers; most borrowers should be able to avoid this added cost – and receive the benefits of a soundly underwritten and fair mortgage – by opting into a QRM. The added cost of non-QRM loans should be the exception rather than the norm. Second, we are concerned that non-QRM loans will be stigmatized by lenders, considered unsafe by bank examiners, and will be made more costly or less available as a result. The rule should be reworked to ensure that most borrowers are able to get a sustainable loan through the QRM.

It is a missed opportunity because the regulators now have the opportunity to drive the market into one dominated by sound, sustainable loans.

Our concerns and suggestions are detailed below.

Almost four years ago, our organization released a report warning that the reckless and abusive lending practices of the previous two decades would lead to approximately 2 million subprime foreclosures. At the time, our report was denounced by the mortgage industry as absurdly pessimistic. Sadly, our projections turned out to be extremely conservative. The damage has been far worse, spreading from the subprime to the prime sectors, catalyzing a housing-lead recession, and triggering historic levels of unemployment.

Since we issued that 2006 report, there have already been as many as 3 million homes lost, and Wall Street analysts recently predicted there could be as many as 11 million more foreclosures filed.[1] The foreclosure crisis has had catastrophic consequences for families and communities. The first wave of homeowners ended up in dire straits owing to abusive mortgage originations, incompetent and predatory mortgage practices, ineffective government oversight, and a complex securitization system that lacks accountability.

Now, millions more are in danger because of the toxic combination of underwater loans and unemployment that festers in so many areas. Even families that never missed a mortgage payment prior to this recession now struggle under financial strains not of their making.

The mortgage lending marketplace has become so problematic that today, private lending is almost non-existent. Government lending is practically the whole market, a circumstance that is not viable over the long term. In order to create a strong housing market moving forward, the private market must come back without repeating the mistakes of the 1990s and early 2000s. The best way to do this is through clear "rules of the road" set forth in the QRM definition that encapsulate the terms of sustainable mortgage lending for most borrowers. Unfortunately instead, the proposal suggests a narrow "gold standard" that will reach a small portion of mortgage borrowers and sets the stage for a two-tiered market to evolve as the private market returns—with good loans for the top tier and substandard loans for the bottom tier.

Some argue that low- and moderate-income borrowers should either take their chances on non-QRM loans, or be denied credit altogether. However, denying such families access to the American dream of homeownership – and the ability to build wealth in the long-term – makes no sense. It would be unfair to deny borrowers who can demonstrate an ability to repay a mortgage the ability to build wealth and ties to the community simply because, e.g., they could not afford to put 20 percent down in cash. This would also have negative repercussions for the economy and the ability for middle class families needing to sell their houses, as a healthy market needs a continuous influx of new customers. The failure to consider the needs of first-time homebuyers and customers from low-wealth backgrounds when we create any new system would be catastrophic for future growth.

Recommendations:

- QRMs should be responsibly underwritten to ensure the borrower has the capacity to repay the loan by its terms out of documented income, taking account of the borrower's other debt.

- QRM loans should be widely available to qualified borrowers to avoid creating an opportunity for less responsible lending to proliferate. Accordingly, QRM loans should be available to all qualified borrowers without restriction based on whether or not the family has the wealth necessary for a large downpayment. Nor should families be excluded based on rigid credit history or debt-to-income ratios that could strand families in rental housing that costs as much, on a monthly basis, as the monthly cost of homeownership.

- The Risk Retention Rule should, among other things, define QRMs as loans that are sensibly structured in accordance with the requirements of a Qualified Mortgage ("QM") as set out in Title XIV of Dodd-Frank, and to be defined by the Federal Reserve Board (or later the CFPB). The definition should exclude loan features associated with payment shock or other elevated default risks, including negative amortization, deferred repayment of principal, balloon payments, substantial rate increases, and prepayment penalties

- This definition should also include appropriate loan servicing standards, including the requirement that servicers mitigate losses by taking appropriate action to maximize the net present value of the mortgages for the benefit of all investors (rather than any particular investor class). Servicers should also be required to pursue loss mitigation rather where doing so would yield a net present value that is equal or greater than that from foreclosure. Additionally, the structure of servicer compensation must not operate to encourage foreclosure over loss mitigation. Servicers must also be required to implement a reasonable process for addressing subordinate liens owned by the servicer or any of its affiliates. The interests of the first lien-holders on the property should have priority in the resolution of a troubled loan, and servicers holding second liens should have an absolute fiduciary responsibility to act in the best interests of the first lien-holders, regardless of the servicer's other interests in the property. Finally, servicers should be required to publicly disclose their ownership interests (or those of any affiliate) in any other loans secured by the property that secures any loan in the pool.

II. Background: The Impact of the Foreclosure Crisis

A. The foreclosure crisis has affected (and will continue to affect) millions of people.

With one in seven borrowers delinquent on their mortgage or already in foreclosure[2] and more than one in four mortgages underwater,[3] continued weakness in the housing sector is already impairing economic recovery and hampering efforts to create jobs and reduce unemployment. According to industry analysts, the total number of foreclosures by the time this crisis abates could be anywhere between 8 and 13 million.[4] A recent study by CRL estimated that 2.5 million foreclosure sales were completed between 2007 and 2009 alone, while another 5.7 million borrowers are at imminent risk of foreclosure[5]

Beyond the impact of the foreclosures on the families losing their homes, foreclosure "spillover" costs to neighbors and communities are massive. Tens of millions of households where the owners have paid their mortgages on time every month are suffering a decrease in their property values that amounts to hundreds of billions of dollars in lost wealth just because they are located near a property in foreclosure. Depending upon the geography and time period, the estimated impact of each foreclosure ranges from 0.6 percent to 1.6 percent in lost value to nearby homes. CRL estimates that the foreclosures projected to occur between 2009 and 2012 will result in $1.86 trillion in lost wealth, which represents an average loss of over $20,000 for each of the 91.5 million houses affected.[6] These losses are on top of the overall loss in property value due to overall housing price declines.[7]

In addition, foreclosures cost states and localities enormous sums of money in lost tax revenue and increased costs for fire, police, and other services because vacant homes attract crime, arson, and squatters. As property values decline further, more foreclosures occur, which drive property values down still more. The Urban Institute estimates that a single foreclosure results in an average of $19,229 in direct costs to the local government.[8]

The crisis also has a severe impact on tenants in rental housing. According to the National Low-Income Housing Coalition, a fifth of single-family (one-four unit) properties in foreclosure were rental properties, and as many as 40 percent of families affected by foreclosure are tenants.[9] While tenants now have some legal protection against immediate eviction,[10] most of them will ultimately be forced to leave their homes.[11] Furthermore, a great deal of housing stock is now owned by the banks rather than by new owners. Banks are not in the business of renting homes and are not well suited to carry out the duties required of a landlord.

Compounding the problem of renters losing homes to foreclosure is the impact that the crisis has on other sources of affordable housing. A policy brief from the Joint Center for Housing Studies reports that dramatic changes at Freddie Mac and Fannie Mae and coincident changes in credit markets have disrupted and increased the cost of funding for the continued development of multi-family (five or more units) properties, despite the fact that underwriting and performance has fared better in this segment than in single-family housing.[12] As a result, even though a general over-supply of single-family housing persists, the deficit in the long-term supply of affordable rental housing may still increase.[13]

B. Badly structured loan products lie at the heart of the mortgage meltdown.

In response to the foreclosure crisis, many in the mortgage industry have evaded responsibility and fended off government efforts to intervene by blaming homeowners for mortgage failures, saying that lower-income borrowers were not ready for homeownership or that government homeownership policies dictated the writing of risky loans.[14] The data refute this claim. Empirical research shows that the elevated risk of foreclosure was an inherent in the structure of the subprime and “exotic” loan products that produced this crisis, and that these same borrowers could easily have qualified for, and sustained, far less risky mortgages that complied with all relevant government policies and regulations.

A number of studies demonstrate that loan performance and loan structure are strongly related. For example, Vertical Capital Solutions found that the least risky loans[15] significantly outperformed riskier mortgages during every year that was studied (2002-

2008), regardless of the prevailing economic conditions and in every one of the top 25 metropolitan statistical areas, holding borrower characteristics constant.[16] That study also confirmed that loan originators frequently steered customers to loans with higher interest rates than the rates for which they qualified and loans loaded with risky features such as exploding interest rates and high prepayment penalties. In fact, 30 percent of the borrowers in the sample (which included all types of loans and borrowers) could have qualified for a safer loan. The Wall Street Journal commissioned a similar study that found 61 percent of subprime loans originated in 2006 "went to people with credit scores high enough to often qualify for conventional [i.e., prime] loans with far better terms."[17]

Even applicants who did not qualify for prime loans could have received sustainable, thirty-year, fixed-rate subprime loans for—at most—half to eight tenths of a percent above the initial rate on the risky ARM loans they were given.[18] Lenders pushed the riskier loans because they produced higher immediate fees and bonuses for them- not due to any government mandate.

CRL's research has demonstrated that common subprime loans with terms such as adjustable rates with steep built-in payment increases and lengthy and expensive prepayment penalties presented an elevated risk of foreclosure *even after accounting for differences in borrowers' credit scores*.[19] A 2008 study from the University of North Carolina at Chapel Hill supports the conclusion that risk was inherent in the structure of the loans themselves.[20] In this study, the authors found a cumulative default rate for recent borrowers with subprime loans to be more than three times that of comparable borrowers with lower-rate loans. Furthermore, the authors found that adjustable interest rates, prepayment penalties, and mortgages sold by brokers were all associated with higher loan defaults. In fact, when risky features were layered into the same loan, the resulting risk of default for a subprime borrower was four to five times higher than for a comparable borrower with the lower- and fixed-rate mortgage from a retail lender.

Finally, CRL conducted a more targeted study to focus on the cost differences between loans originated by independent mortgage brokers and those originated by retail lenders. In that study, we found that for subprime borrowers, broker-originated loans were consistently far more expensive than retail-originated loans, with additional interest payments ranging from $17,000 to $43,000 per $100,000 borrowed over the scheduled life of the loan.[21] Even in the first four years of a mortgage, a typical subprime borrower who used a broker paid $5,222 more than a borrower with similar creditworthiness who received a loan directly from a lender.[22] The data overwhelmingly supports that irresponsible lending and toxic loan products lie at the heart of the crisis.

C. Minority families and communities of color bear a disproportionate burden of the foreclosure crisis.

It is well documented that African-American and Latino families disproportionately received the most expensive and dangerous types of loans during the heyday of the subprime market.[23] CRL research demonstrates that, not surprisingly, communities of color are now disproportionately experiencing foreclosure.

In June 2010, our report, "Foreclosures by Race and Ethnicity: The Demographics of a Crisis" found that African-Americans and Latinos have experienced completed foreclosures at much higher rates than whites, even after controlling for income.[24] While the majority of foreclosed families -an estimated 56 percent-involved a white family, when looking at rates within racial and ethnic groups, nearly 8 percent of both African-Americans and Latinos had already lost a home, compared with 4.5 percent of whites. We conservatively estimate that, among homeowners in 2006, 17 percent of Latino and 11 percent of African-American homeowners have lost or are at imminent risk of losing their home, compared with 7 percent of non-Hispanic white homeowners. The losses extend beyond families who lose their home: From 2009 to 2012, those living near a foreclosed property in African American and Latino communities will have seen their home values drop more than $350 billion.

Another CRL report issued in August 2010, "Dreams Deferred: Impacts and Characteristics of the California Foreclosure Crisis," shows that more than half of all foreclosures in that state involved Latinos and African Americans.[25] Contrary to the popular narrative, most homes lost were not sprawling "McMansions," but rather were modest properties that typically were valued significantly below area median values when the home loan was made.

The impact of this crisis on families and communities of color is devastating. Homeownership is the primary source of family wealth in this country, and people often tap home equity to start a new business, pay for higher education and secure a comfortable retirement. In addition, home equity provides a financial cushion against unexpected financial hardships, such as job loss, divorce or medical expenses. Perhaps most important, homeownership is the primary means by which wealth is transferred from one generation to the next, which enables the younger generation to advance further than the previous one. Minority families already have much lower levels of wealth than white families, and therefore this crisis not only threatens the financial stability and mobility of individual families but also exacerbates an already enormous wealth gap between whites and communities of color.[26]

D. Although Fannie Mae and Freddie Mac should not have purchased subprime MBS, their purchases did not cause the crisis.

The roles of Federal National Mortgage Association ("Fannie Mae" or "Fannie") and the Federal Home Loan Mortgage Corporation ("Freddie Mac" or "Freddie") have certainly had an impact on the shape of the housing market and the availability of certain products over the course of their existence. However, Fannie and Freddie did not cause the subprime crisis.

While Fannie Mae and Freddie Mac should not have purchased subprime mortgage-backed securities (and organizations such as ours urged them not to), their role in purchasing and securitizing problem loans was small in comparison with that of private industry. *All subprime mortgage backed securities were created by Wall Street*. Fannie

Mae and Freddie Mac did not themselves securitize any of these loans because the loans did not meet their standards.[27] When they finally began to purchase the MBS, they were relative late-comers to a market that had been created by private sector firms, and they also purchased only the least risky tranches of these securities.[28]

Ironically, as subprime lending rose, the GSEs' role in the overall mortgage market diminished substantially. As of 2001, Fannie Mae and Freddie Mac funded almost two-thirds of home mortgage loans across the United States. These were loans that Fannie Mae and Freddie Mac purchased directly from originators who met the GSE guidelines and the GSEs either held on their balance sheets or securitized and sold to investors. Subprime loans accounted for just 7 percent of the market. Around 2003, private issuers were beginning to introduce new, riskier loan products into the market, and began to displace the GSEs. In early 2004, private-issue MBS surpassed the GSE issuances of all loans, and by early 2006, Fannie and Freddie's market share of new issuances had dropped to one-third of the total. As the role of the GSEs was declining, the percentage of subprime loans in the mortgage market almost tripled.[29]

Eventually, Fannie and Freddie guaranteed and securitized Alt-A loans—loans to relatively wealthier borrowers with higher credit scores and risky features such as limited documentation. These investments are the primary source of the GSEs' losses, and are the reason why the GSEs were placed into conservatorship.[30] But here too, the GSEs did not lead the market; rather, they followed the market into these loans. The market did not depend on the GSEs.

Finally, it is important to note that GSE loans—including loans to "riskier" borrowers—are performing better than the private market. As of June 2010, 13.35 percent of GSE loans to borrowers with credit scores under 660 were 90+ days delinquent or in foreclosure. By comparison, the Mortgage Bankers Association reports that the serious delinquency rate for subprime loans was *over 28 percent*.[31]

E. The Community Reinvestment Act did not lead to the foreclosure crisis

Critics of the Community Reinvestment Act ("CRA") claim it caused the crisis by "forcing" lenders to make risky loans to low- and moderate-income families and to communities of color. Yet – even apart from the fact that the CRA requires loans to qualified buyers, not risky ones – most subprime lending was done by financial institutions that are not even subject to CRA requirements. CRA covers banks and thrifts. These institutions did not make many subprime loans. In fact, fully 94 percent of subprime mortgage loans were made by institutions <u>not covered by CRA</u>, or outside the institutions' CRA assessment areas, including affiliates that were excluded from CRA compliance review.[32] Moreover, the CRA was passed in 1977, and was in effect for more than two decades before subprime lending appeared.[33]

Nor can CRA be blamed for the big banks' disastrous investment in mortgage-backed securities backed by subprime loans. These investments were not covered by CRA—

they did not produce CRA credit and were not encouraged by CRA.[34] A 2008 study found that CRA-covered banks were less likely than other lenders to make risky, high-cost loans.[35]

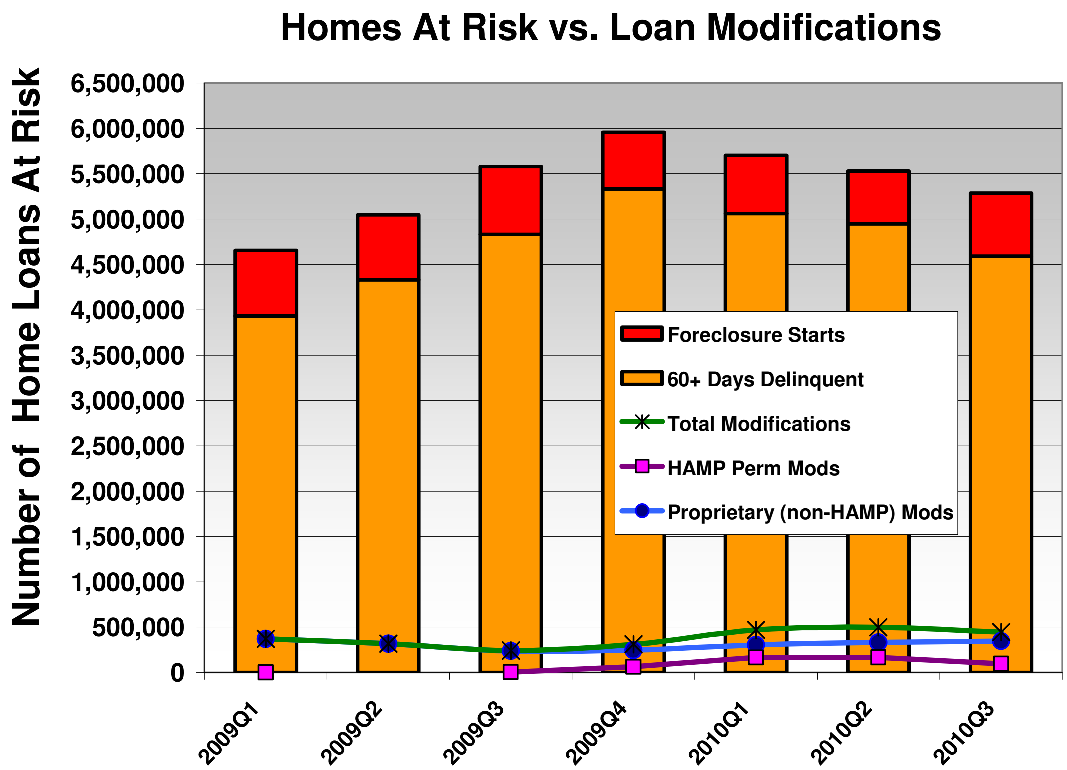
Finally, a report issued by the Federal Reserve Board in 2000 concluded that mortgage loans satisfying the low- and moderate-income element of the CRA's lending test proved to be at least marginally profitable for most institutions, and that many institutions found that CRA lending performed no differently than other lending.[36] Similarly, the experience of community development financial institutions ("CDFIs") serving low- and moderate-income communities, demonstrates that responsible loans in these communities can succeed. A recent report on the FY 2007 performance of community development financial institution ("CDFI") banks—over 71 percent of whose branches are operated in low- to moderate-income communities—found that the majority were profitable. Similarly, community development credit unions had a loan loss rate that was on a par with that of mainstream credit unions.[37]

Those who have studied the issue have concluded, as did John Dugan, former Comptroller of the Currency, that "CRA is not the culprit behind the subprime mortgage lending abuses, or the broader credit quality issues in the marketplace."[38]

F. Servicer failings have compounded the crisis, producing avoidable defaults and foreclosures.

Despite both HAMP and proprietary modifications, the number of homeowners in foreclosure continues to overwhelm the number of borrowers who have received a permanent loan modification (see Figure 2).

Figure 2. Demand for Relief Continues to Outpace Loan Modifications



Sources: *MBA National Delinquency Survey, (2009Q1-2010Q3), Hope Now*

About 4.6 million mortgages are in foreclosure or 90 days or more delinquent as of June 30.[39] According to the State Foreclosure Prevention Working Group, more than 60 percent of homeowners with serious delinquent loans are still not involved in any loss mitigation activity.[40]

For at least a decade, community-based organizations, housing counselors and advocates nationwide have documented a pattern of shoddy, abusive and illegal practices by mortgage servicers whose staff are trained for collection activities rather than loss mitigation, whose infrastructure cannot handle the volume and intensity of demand, and whose business records are a mess.[41]

These abuses include:

- Misapplication of borrower payments, which results in inappropriate and unauthorized late fees and other charges, as well as misuse of borrower funds improperly placed in "suspense" accounts to create income for servicers.
- Force-placing very expensive hazard insurance and even charging the borrower's account when the borrower's hazard insurance has not lapsed, often driving an otherwise current borrower into delinquency and even foreclosure.
- Charging unlawful default- and delinquency-related fees for property monitoring and broker price opinions.

- Failing or refusing to provide payoff quotations to borrowers, preventing refinancing and short sales.
- Improperly managing borrower accounts for real estate tax and insurance escrows, including failure to timely disburse payments for insurance and taxes, causing cancellation and then improper force-placing of insurance as well as tax delinquencies and tax sales.
- Abuses in the default and delinquency process, including failing to properly send notices of default, prematurely initiating foreclosures during right to cure periods and immediately following transfer from another servicer and without proper notices to borrowers, initiating foreclosure when the borrower is not in default or when the borrower has cured the default by paying the required amount, and failing to adhere to loss mitigation requirements of investors.

These practices have become so ingrained in the servicing culture that they are now endemic in the industry. The harm to which borrowers have been subjected as a result of these abuses cannot be overstated. Numerous homeowners are burdened with unsupported and inflated mortgage balances and have been subjected to unnecessary defaults and wrongful foreclosures even when they are not delinquent. Countless families have been removed from their homes despite the absence of a valid claim that their mortgage was in arrears.

Perverse financial incentives in pooling and servicing contracts explain why servicers press forward with foreclosures when other solutions are more advantageous to both homeowner and investor. For example, servicers are entitled to charge and collect a variety of fees after the homeowner goes into default and can recover the full amount of those fees off the top of the foreclosure proceeds.[42] The problem of misaligned incentives is compounded by a lack of adequate resources, management, and quality control.

What's more, recent legal proceedings have uncovered the servicing industry's stunning disregard of basic due process requirements.[43] Numerous servicers have engaged in widespread fraud in pursuing foreclosures through the courts and, in non-judicial foreclosure states, through power of sale clauses. It is becoming more and more apparent that servicers falsify court documents not just to save time and money, but because they simply have not kept the accurate records of ownership, payments and escrow accounts that would enable them to proceed legally.

III. QRM regulations should ensure that responsible lending becomes the norm

A. Requiring mortgage securitizers to retain 5 percent of credit risk is unlikely to meaningfully deter inappropriate lending; the real value of the risk retention rule is in its ability to incentivize lenders to make responsible QRM loans.

Before there were mortgage-backed securities, mortgage lenders retained a relationship with their borrowers throughout the life of the loan and had a clear financial stake in each borrower's success. This gave lenders strong motivation to confirm that the borrower could afford the required monthly payments and to avoid subjecting the borrower to unmanageable payment increases. It also led lenders to work with borrowers through periods of illness or job loss to ensure that short-term cash-flow shortages did not produce needless defaults. As a consequence, both historically and recently, these "portfolio loans" (loans held in the portfolio of the originating lender) performed significantly better than the securitized loans that were securitized and sold to investors.

Dodd-Frank's risk retention provisions are intended to incentivize lenders to lend more responsibly. Dodd-Frank directs the agencies to define QRM taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. The statute provides the following examples of the features to be considered: documentation and verification of borrower resources, residual income and debt-to-income ratios, mitigating the potential for payment shock on adjustable rate mortgages, mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination to the extent they reduce the default risk, and prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments and other features demonstrated to have a higher default risk.[44] The three Senate sponsors of the risk retention provisions—Senators Johnny Isakson, Kay Hagan, and Mary Landrieu, D-La—sent a letter to the regulators saying that they intentionally did not include down payment requirements in the QRM.[45]

By directing the regulators to define QRM by characteristics shown to lower default risk, Congress has created the framework for a market in which sensibly underwritten, responsibly structured, competently serviced mortgages are once again the norm. By making these mortgages widely available to all creditworthy families, the rules would protect everyone in the housing finance chain—borrowers, lenders, investors—from the disruptions that occur when irresponsible lending is allowed to flourish. Unfortunately, the proposed rule strays far from Congressional intent.

B. Requiring large down-payments to obtain a QRM loan would preclude many credit-worthy families from the most sustainable loans—negatively affecting a large proportion of middle class families and a disproportionate number of families of color—without a material improvement in the performance of those loans.

1. Requiring large down-payments would put homeownership beyond much of the middle class, with disproportionate impact on families of color.

Limiting low downpayment loans would unnecessarily close the door to homeownership for middle-class families, and is contrary to Congressional intent.

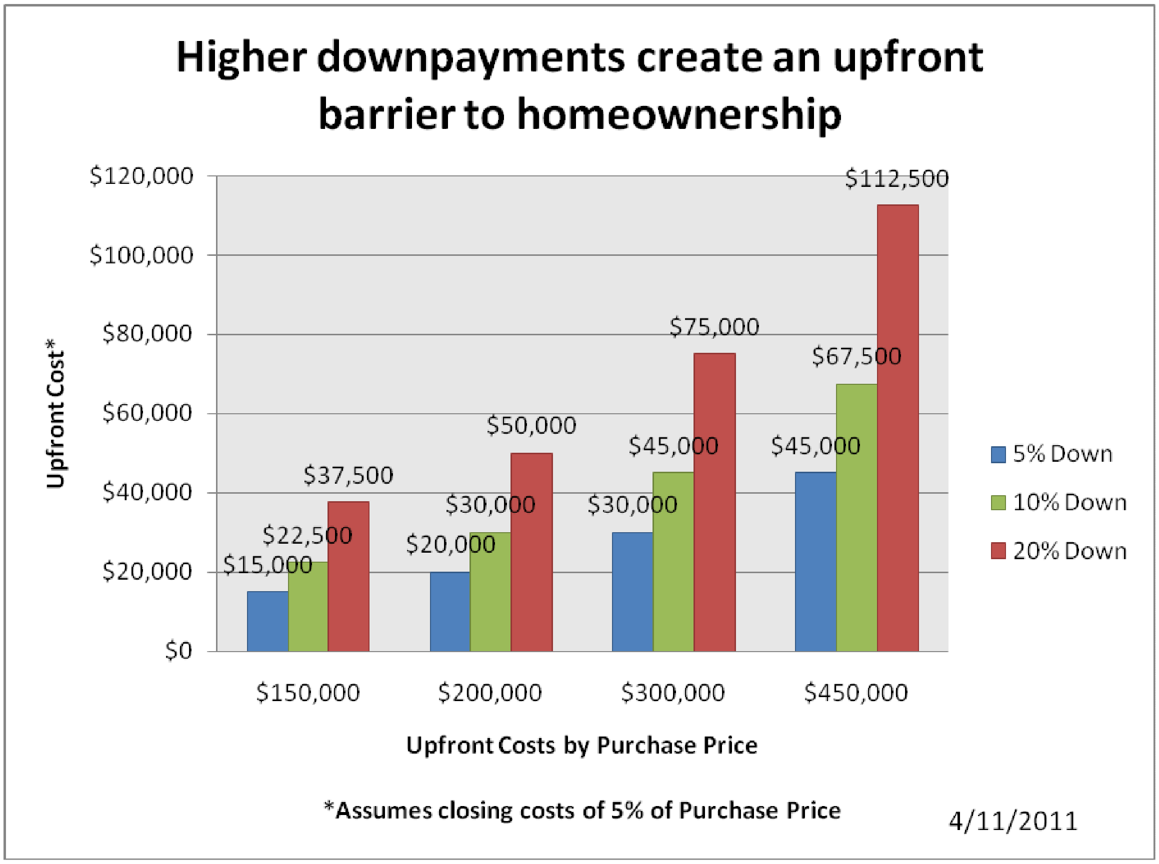
In 2009, the median sales price of a single-family home was $172,100. Even with a substantial savings commitment ($3,000 per year), it would take a middle-income family 14 years to accumulate the cash needed for a 20 percent downpayment.[46]

	20% Downpayment	10% Downpayment	5% Downpayment
Sales price	$ 172,100	$ 172,100	$ 172,100
Cash required at closing (downpayment + 5% closing costs)	$ 43,025	$ 25,815	17,210
Monthly savings amount	$ 250	$ 250	$ 250
Approx. # years required to build downpayment	**14**	**9**	**6**

Although $3,000 in savings per year may not sound significant, it represents a personal savings rate of 7.5 percent per year for the average middle class family (2009 real median household income in the U.S. was $49,777.) For Latino and African-American households, this would require savings rates of 9.9 percent and 11.5 percent, respectively.[47] Currently, the savings rate for U.S. households is 5.8 percent, one of the highest savings rates since the early 1990s.[48]

In high cost areas, a large downpayment requirement would be even more problematic for working families. Consider, for example Staten Island, New York, and Oakland, California, where the average listing price for a single-family home is $415,516 (as of 2010)[49] and $484,476 (as of 2011) [50] respectively, requiring minimum downpayments of over $80,000.

As the following chart demonstrates, higher downpayments create barriers to homeownership and the corresponding wealth-building:



The agencies' proposed down-payment requirements for refinance loans are even more extreme—25 percent for refinances in which the homeowner takes no cash out, and 30 percent for so-called "cash out" refinances. This means that a family current on its mortgage payments would barred from refinancing into a lower-cost QRM loan simply because they had less than a 25 percent equity stake in the home. This would disqualify many current homeowners whose equity has been wiped out in the recent crisis, as demonstrated by the examples of varying equity levels among homeowners nationwide and in individual states.

	Percent of Homeowners with home equity of Less than 30%	Percent of Homeowners with home equity of Less than 25%	Percent of Homeowners with home equity of Less than 20%	Percent of Homeowners with home equity of Less than 10%	Percent of Homeowners with home equity of Less than 5%
Nation-wide	57	52	46	34	28
Califor-nia	58	54	49	41	36
Florida	70	66	63	55	51
Illinois	58	52	46	33	27
New Jersey	46	41	35	25	21

Source: Community Mortgage Banking Project, based on data from CoreLogic Inc.

More than half of current homeowners will be disqualified by the proposed QRM definition from even a rate-reducing refinance loan unless they can come up with a cash downpayment.

For first-time homebuyers, a ten or twenty percent downpayment requirement would pose a severe barrier to market entry. Among renters (from whom the pool of first time homebuyers is drawn), only the wealthiest 25 percent of white, non-Hispanics nationwide have cash savings in excess of about $5,000. For renters of color, only the wealthiest 25 percent have more than $2,000.[51] Even a ten percent downpayment requirement would put homeownership beyond the reach of many creditworthy families who would otherwise have succeeded in homeownership, and built wealth for their families.

2. Excluding from QRM loans those families lacking sufficient down-payments will come with significant social costs without corresponding benefit to borrowers, investors or the taxpayers.

Barring creditworthy families from responsible mortgage loans will come with social costs that are not counter-balanced by improvements in the loan loss rates.

Low downpayment loans have been originated safely for over 50 years, but they expanded in volume with the growth of the secondary mortgage market in the 1980s. Over 27 million low downpayment loans were made between 1990 and 2009 (excluding FHA/VA loans).[52] This represents almost one-quarter of the loans purchased by Fannie Mae and Freddie Mac and 13 percent of total mortgage originations during this period. Because of these low downpayment loans, millions of low-to-moderate income families became successful homeowners. These mortgages generally performed well, producing limited losses for lenders, investors and taxpayers, while expanding the middle class.

The risks associated with subprime loans of recent years derived not from the small downpayments so much as from the failure to establish ability to repay beyond the "teaser rate" period of the loan, the failure to document income, and loan features such as explosive interest rate increases and exorbitant prepayment penalties that made it difficult for struggling homeowners to exit the loan. Low downpayment loans without these risky features have generally performed well. Studies have shown that for these responsible loans, low downpayments are not an important driver of default, at least so long as there is some downpayment.[53] In a recent review of loan performance based on various loan attributes, Mark Zandi observed, "Even loans with only 3 percent down at origination have experienced a surprisingly modest 4.7 percent foreclosure rate" during the recent period of extreme financial stress, where the loans were otherwise well structured and underwritten.[54]

The cost side of the ledger includes the prolonging of instability in the housing market. Home sellers need buyers. Impeding market access for creditworthy home buyers will harm existing homeowners who need to sell the home in order to relocate for a job, to accommodate a growing family, or to scale back in retirement. Unduly restricting the number of possible buyers will make it harder for families to sell their home and harder for them to realize its value.

Another substantial cost will be the loss of homeownership as the most significant wealth-building tool for American families. Beyond the well-documented social and community benefits of owning a home,[55] as a leveraged investment with a built in savings mechanism, homeownership remains the primary way in which American households accumulate wealth.[56] In 2000, home equity accounted for 32.3 percent of aggregate household wealth for all Americans. For families of color, this percentage is even higher: For African Americans, home equity accounted for 61.8 percent of aggregate wealth, and for Hispanics, 50.8 percent.[57] Some recent studies have concluded that for low-income families, not only is homeownership an important means of wealth accumulation, but also for most of these households it is the *only* form of wealth accumulation.[58] Indeed, among households earning between $20,000 and $50,000, those who own homes have 19 times the wealth of those who rent.[59] Overall, real estate holdings comprise the greatest share of assets held by U.S. households.

Restricting access to homeownership based on wealth accumulation will also exacerbate further the wealth gap between Whites and African Americans, which has already *quadrupled* over the course of a single generation.[60]

C. Other QRM provisions are also unduly restrictive and will unnecessarily harm borrowers, investors and the overall economy.

The proposed QRM definition proposes to add a debt to income ratio ("DTI") of 28 percent for mortgage debt and 36 percent for all debt, as well as a restriction of no 60 day delinquencies in the previous two years. While very high debt to income ratios and asset based lending to those unable to pay were contributing factors to high mortgage defaults, we believe the proposed standards are overly restrictive.

Regarding DTI, subprime loans during the crisis regularly permitted DTIs of 50 or 55%. Leaving many families with little residual income for necessary living expenses and makes their mortgages unsustainable. However, the proposed DTI standards are very restrictive, and could be expanded without unnecessary risk.

Likewise with past credit delinquencies, these are a relevant underwriting criterion, but again the proposed standards are overly restrictive. For example, many families have inadequate health insurance and may incur an uninsured medical expense, even though they are very creditworthy. Experience through Self-Help's lending and that of others has shown that such debts are not indicative of risky lending.

CRL is still evaluating data in terms of the exact standards that would be appropriate for these factors. We note that one leading economist, Mark Zandi, of Moodys.com, has also expressed concerns that the proposed standards for these factors are too restrictive and has suggested debt to income ratios of 33 percent for mortgage debt and 45% for all debt, and a standard of no 90 day delinquencies in the past two years.[61]

D.The QRM definition should provide for appropriate servicing.

As demonstrated earlier in this testimony, servicers are failing in their role to serve as intermediaries between borrowers and investors. Some borrowers face default or even foreclosure because of improperly applied payments by servicers, or pay thousands of dollars for force-placed hazard insurance when they already have their own policies. Other borrowers who are truly in default but appear to qualify for modifications are denied (or not even considered for) such modifications because of servicer incapacity, servicer conflicts-of-interests (e.g., when the servicer is the second-lien holder or earns more by foreclosing by imposing fees), or conflicts among investors (e.g., investors overall would do better with a modification rather than a foreclosure, but certain investors would lose).

The QRM definition should include appropriate loan servicing standards, including the requirement that servicers mitigate losses by taking appropriate action to maximize the net present value of the mortgages for the benefit of all investors (rather than any particular investor class). Servicers should also be required to pursue loss mitigation rather than foreclosure where doing so would yield a net present value that is equal or greater than under foreclosure. The structure of servicer compensation must not operate to encourage foreclosure over loss mitigation.

Servicers must be required to implement a reasonable process for addressing subordinate liens owned by the servicer or any of its affiliates. The interests of the first lien-holders on the property should have priority in the resolution of a troubled loan, and servicers holding second liens should have an absolute fiduciary responsibility to act in the best interests of the first lien-holders, regardless of the servicer's other interests in the property. Finally, servicers should be required to publicly disclose their ownership interests (or those of any affiliate) in any other loans secured by the property that secures any loan in the pool.

Conclusion

For these reasons, we believe it would be a mistake to build barriers to first-time homeownership into the fundamental structure of the nation's housing finance system, either through the process of GSE reform, through the qualified residential mortgage definition, or in any other way. In fact, Congress enacted the QRM safe harbor within the 5% risk retention rule to ensure that most borrowers would be served by well-structured, responsibly underwritten and appropriately serviced mortgage loans. The QRM definition should be restructured so that such loans would become widely available to all credit-worthy families. Unfortunately, under the current proposal, the QRM definition would recreate a two-tiered credit market, relegating many creditworthy families to second-tier, less sustainable mortgage loans. Access to responsibly structured properly serviced loans is particularly important for families who lack the wealth to sustain payment shock or hedge against interest rate risk.

Barring these families from access to responsible loans would reinforce an unfair, separate and unequal housing finance system that would relegate underserved families to FHA or to higher cost, less desirable lending channels – or even exclude them entirely from homeownership they could otherwise sustain. Creditworthy borrowers should not be limited to FHA or to loans that do not meet QRM standards simply because they cannot make a large downpayment or meet overly restrictive debt to income and credit history requirements. Middle class families should not be denied creditworthy families to purchase their homes. That is not good for homeowners or for the health of the overall market. As a result, we strongly urge regulators to revise the proposed rule in the manner outlined in this testimony.

We appreciate the chance to testify today and look forward to continuing to work with Congress and regulators on these crucial issues.

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[1] Laurie Goodman, Roger Ashworth, Brian Landy, and Lidan Yang, "The Housing Crisis—Sizing the Problem, Proposing Solutions," Amherst Mortgage Insight (Oct. 1, 2010) [hereinafter "Amherst Study," on file with CRL.

[2] MBA National Delinquency Survey, August 2010 [hereinafter "MBA National Delinquency Survey"]. The combined percentage of loans in foreclosure or at least one payment past due was 13.7 percent on a non-seasonally adjusted basis.

[3] This is for Q4 2010 and can be found at Zillow's Real Estate Market Reports at zillow.com. Another source is the First American Core Logic Negative Equity Report, which has reported similar statistics and whose Q4 2010 report should be out in a few weeks.

[4] Rod Dubitsky, Larry Yang, Stevan Stevanovic and Thomas Suehr, *Foreclosure Update: over 8 million foreclosures expected,* Credit Suisse (Dec. 4, 2008) (projecting 10 million foreclosures by 2012 depending on current unemployment rates); Jan Hatzius and Michael A. Marschoun, *Home Prices and Credit Losses: Projections and Policy Options*, Goldman Sachs Global Economics Paper (Jan. 13, 2009) (projecting 13 million foreclosures by 2014) at 16.

[5] Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, "Foreclosures by Race and Ethnicity: The Demographics of a Crisis," Center for Responsible Lending (June 18, 2010), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.

[6] For methodology, *see* Center for Responsible Lending, "Soaring Spillover: Accelerating Foreclosures to Cost Neighbors $502 Billion in 2009 Alone; 69.5 Million Homes Lose $7,200 on Average; Over Next Four Years, 91.5 Million Families to Lose $1.9 Trillion in Home Value; $20,300 on Average" (May 2009), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf.

[7] Center for Responsible Lending, *Continued Decay and Shaky Repairs: The State of Subprime Loans Today* (Jan. 8, 2009), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/continued_decay_and_shaky_repairs.pdf.

[8] G. Thomas Kingsley, Robin Smith, & David Price, *The Impact of Foreclosures on Families and Communities*, The Urban Institute (May 2009), at 21, Fig. 3.

[9] D. Pelletiere, "Renters in Foreclosure: Defining the Problem, Identifying Solutions," National Low-Income Housing Coalition (Jan. 2010), *available at* http://dsl-router.nlihc.org/doc/renters-in-foreclosure.pdf.

[10] The "Helping Families Save Their Home Act of 2000," signed into law by President Obama in May 2009, provided that month-to-month tenants must receive 90 days' notice before having to move out and that tenants with leases may stay until the end of their lease (unless the owner plans to occupy the property, in which case tenants still must receive 90 days notice).

[11] Also, many tenants are not aware of their right to stay in their homes, and when they receive a notice from a bank lawyer naming their landlord and seeking eviction, they leave regardless of their legal rights. *See, e.g.,* Testimony of Deborah Cuevas Hill, The Legal Aid Society of the District of Columbia, before the Committee on Public Services and Consumer Affairs, Council of the District of Columbia (May 28, 2009), *available at* http://www.legalaiddc.org/issues/documents/TestimonyreTOPALegilsation.pdf.

[12] "Meeting Multifamily Finance Housing Needs During and After the Crisis: A Policy Brief," Joint Center for Housing Studies, Harvard University (Jan. 2009), *available at* http://www.jchs.harvard.edu/publications/finance/multifamily_housing_finance_needs.pdf.

[13] *Id.*

[14] It is popular, although incorrect, to blame the Community Reinvestment Act (CRA) and Fannie Mae and Freddie Mac (the GSEs) for the foreclosure crisis. For a complete discussion of why CRA and the GSEs did not cause the crisis, *see* Testimony of Eric Stein, Center for Responsible Lending, before the Senate Committee on Banking (Oct. 16, 2008), *available at* http://www.responsiblelending.org/mortgage-lending/policy-legislation/congress/senate-testimony-10-16-08-hearing-stein-final.pdf.

[15] These were loans with the following characteristics: debt-to-income ratios lower than 41percent; fixed rate or loans with at least a 7 year fixed period; a term of 30 years or less; no balloon payments; no interest-only or negative amortization loans; full income documentation; and either an LTV under 80percent or, if LTV above 80percent, with mortgage insurance.

[16] Vertical Capital Solutions, Historical Performance of Qualified vs. Non-Qualified Mortgage Loans (February 2010) (on file with CRL).

[17] Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy: As Housing Boomed, Industry Pushed Loans To a Broader Market*, Wall Street Journal at A1 (Dec. 3, 2007).

[18] Letter from Coalition for Fair & Affordable Lending to Ben S. Bernanke, Sheila C. Bair, John C. Dugan, John M. Reich, JoAnn Johnson, and Neil Milner (Jan. 25, 2007) at 3.

[19] *See e.g.,* Yuliya Demyanyk, "Ten Myths About Subprime Mortgages," Economic Commentary, Federal Reserve Bank of Cleveland (May 2009) *available at* http://www.clevelandfed.org/research/commentary/2009/0509.pdf; Karen Weaver, "The Sub-Prime Mortgage Crisis: A Synopsis," Deutsch Bank (2008) *available at* http://www.globalsecuritisation.com/08_GBP/GBP_GSSF08_022_031_DB_US_SubPrm.pdf (concluding that subprime mortgages "could only perform in an environment of continued easy credit and rising home prices).

[20] Lei Ding, Roberto G. Quercia, Janneke Ratcliff, and Wei Li, "Risky Borrowers or Risky Mortgages: Disaggregating Effects Using Propensity Score Models," Center for Community Capital, University of North Carolina at Chapel Hill (Sept. 13, 2008), *available at* http://www.ccc.unc.edu/abstracts/091308_Risky.php.

[21] Center for Responsible Lending, *Steered Wrong: Brokers, Borrowers and Subprime Loans* (April 8, 2008), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf.

[22] *Id.*

[23] R.B. Avery, G.B. Canner, and R.E. Cook, Summer 2005. "New Information Reported under HMDA and Its Application in Fair Lending Enforcement," Federal Reserve Bulletin (available at http://www.federalreserve.gov/pubs/bulletin/2005/summer05_hmda.pdf); R.B. Avery, K.P. Brevoort, and G.B. Canner, September 2006. "Higher-Priced Home Lending and the 2005 HMDA Data," Federal Reserve Bulletin (available at http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf); R.B. Avery, K.P. Brevoort, and G.B. Canner, December 2007. "The 2006 HMDA Data" Federal Reserve Bulletin (available at http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf); R.B. Avery, K.P. Brevoort, G.B. Canner, December 2008. "The 2007 HMDA Data", Federal Reserve Bulletin (available at http://www.federalreserve.gov/pubs/bulletin/2008/pdf/hmda07final.pdf); R.B. Avery, K.P. Brevoort, G.B. Canner, September 2009, "The 2008 HMDA Data", forthcoming in Federal Reserve Bulletin (available at http://www.federalreserve.gov/pubs/bulletin/2009/pdf/hmda08draft2.pdf). *See also* Debbie Gruenstein Bocian, Keith Ernst and Wei Lee, "Race, Ethnicity and Subprime Loan Pricing." Journal of Economics and Business, Vol. 60, Issues 1-2, January-February 2008, at 110-124; Debbie Gruenstein Bocian and Richard Zhai, "Borrowers in High Minority Areas More Likely to Receive Prepayment Penalties on Subprime Loans,"January 2005, available at http://www.responsiblelending.org/mediacenter/press-releases/archives/rr004-PPP_Minority_Neighborhoods-0105.pdf

[24] *Supra* note 5.

[25] Debbie Gruenstein Bocian, Peter Smith, Ginna Green and Paul Leonard, "Dreams Deferred: Impacts and Characteristics of the California Mortgage Crisis." Center for Responsible Lending (August 2010), *available at* http://www.responsiblelending.org/california/ca-mortgage/research-analysis/dreams-deferred-CA-foreclosure-report-August-2010.pdf.

[26] According to the 2007 Survey of Consumer Finance, the median net worth for white, non-Hispanic families in 2007 was $171,200, compared to $28,300 for families of color. *See* Table 4 of the Survey of Consumer Finance (Tables based on Internal Data, Estimates in Nominal Dollars), *available at* http://www.federalreserve.gov/PUBS/oss/oss2/2007/scf2007home.html.

[27] See Fannie Mae Single Family Selling Guide, *available at* http://www.allregs.com/efnma/index.asp?dv=0&id=a&ii=0&im=0&io=fnma&ip=/&iq=0&iv=0&iw=0&iy=0&iz=0&fc=0&fk=_&fm=0&fs=0&fv=0&sd=/&sm=1&sp=fnma&sq=_&st=_&sv=0&sx=/&sy=0&sz=0&t=0&tc=fnma&tp=/&td=0&ti=0&tm=0&to=fnma&tw=0&tv=0&tq=0&tx=/; Freddie Mac Seller/Servicer Guide, available at http://www.freddiemac.com/sell/guide/#.

[28] *Inside the GSEs*, January 3, 2007, p. 4. These securities are divided into tranches, with the AAA tranches being the least risky, and for this reason the easiest to sell to investors. Fannie Mae and Freddie Mac purchased only AAA tranches. The harder securities to sell are those from the subordinate tranches. These were made palatable to investors through the creation of collateralized debt obligations, which repackaged BBB tranches into, in part, a new set of AAA tranches, which help to further market the securities; to my knowledge the GSEs did not invest in CDOs. It was the ability to fund the riskiest portion of subprime mortgage loans that made possible the explosive growth of subprime lending. See Pershing Square Capital Management, L.P., "Who's Holding the Bag," presentation, May 2007, available at http://www.designs.valueinvestorinsight.com/bonus/pdf/IraSohnFinal.pdf.

[29] See David Goldstein and Kevin G. Hall, "Private sector loans, not Fannie or Freddie, triggered crisis," McClatchy Newspapers (Oct. 11, 2008) ("Between 2004 and 2006, when subprime lending was exploding, Fannie and Freddie went from holding a high of 48 percent of the subprime loans that were sold into the

secondary market to holding about 24 percent, according to data from Inside Mortgage Finance, a specialty publication. One reason is that Fannie and Freddie were subject to tougher standards than many of the unregulated players in the private sector who weakened lending standards, most of whom have gone bankrupt or are now in deep trouble. During those same explosive three years, private investment banks—not Fannie and Freddie—dominated the mortgage loans that were packaged and sold into the secondary mortgage market. In 2005 and 2006, the private sector securitized almost two thirds of all U.S. mortgages, supplanting Fannie and Freddie, according to a number of specialty publications that track this data.") available at http://www.mcclatchydc.com/251/story/53802.html.

[30] Fannie Mae, Investor presentation, "Fannie Mae 2008 Q2 10-Q Investor Summary," (Aug. 6, 2008), p.36, available at: http://www.fanniemae.com/media/pdf/webcast/080808transcript.pdf. By the middle of 2008, Alt-A loans accounted for roughly 10percent of Fannie Mae and Freddie Mac's risk exposure, but 50percent of their combined losses. Federal National Mortgage Association, United States Securities and Exchange Commission Form 10-Q, for the quarterly period ended June 30, 2008, p.6, available at http://www.fanniemae.com/ir/pdf/earnings/2008/q22008.pdf; Federal Home Loan Mortgage Corporation, United States Securities and Exchange Commission Form 10-Q, for the quarterly period ended June 30, 2008, p.71, available at http://www.freddiemac.com/investors.

[31] Kevin Park, "Fannie, Freddie and the Foreclosure Crisis," University of North Carolina Center for Community Capital (Sept. 2010), available at http://www.ccc.unc.edu/documents/FannieFreddieForeclosure.pdf at 4.

[32] Staff Analysis of the Relationship between the CRA and the Subprime Crisis, Nov. 21, 2008, Board of Governors of the Federal Reserve, Division of Research and Statistics (available at http://www.federalreserve.gov/newsevents/speech/20081203_analysis.pdf).

[33] For further discussions of how CRA has aided rather than harmed communities, *see* Janet L. Yellen, Opening Remarks to the 2008 National Interagency Community Reinvestment Conference, San Francisco, California (March 31, 2008) (noting that studies have shown that the CRA has increased the volume of responsible lending to low- and moderate-income households); Ann F. Jaedicke, Testimony Before the Committee on Financial Services, US House of Representatives (February 13, 2008) ("over half of subprime mortgages of the last several years—and the ones with the most questionable underwriting standards—were originated through mortgage brokers for securitization by nonbanks, including major investment banks"); Michael S. Barr, *Credit Where It Counts: Maintaining a Strong Community Reinvestment Act,* Brookings Institution Research Brief (May 2005) ("encouraged by the law, banks and thrifts have developed expertise in serving low-income communities.").

[34] Federal Register Vol. 75, No. 47 (Mar. 11, 2010) at 11652 ("As a general rule, mortgage backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations.")

[35] See Traiger & Hinckley LLP, The Community Reinvestment Act: A Welcome Anomaly in the Foreclosure Crisis: Indications that the CRA Deterred Irresponsible Lending in the 15 Most Populous U.S. Metropolitan Areas, Jan. 8, 2008, *available at* http://www.traigerlaw.com/publications/traiger_hinckley_llp_cra_foreclosure_study_1-7-08.pdf.

[36] Board of Governors of the Federal Reserve System, "The Performance and Profitability of CRA-Related Lending, A report submitted to Congress pursuant to Section 713 of the Gramm-Leach-Bliley Act of 1999." (July, 17, 2000) at 45-46, www.federalreserve.gov/boarddocs/surveys/craloansurvey/cratext.pdf; see also "CRA Special Lending Programs," Avery, Bostic and Canner, Federal Reserve Bulletin (Nov. 2000) at 723, www.federalreserve.gov/pubs/bulletin/2000/1100lead.pdf (Ninety-three percent of responding CRA-covered institutions so reported).

[37] The CDFI Data Project, Fiscal Year 2007, Seventh Edition, "Providing Capital, Building Communities, Creating Impact" http://www.opportunityfinance.net/industry/industry_sub1.aspx?id=248.

[38] Press release issued on November 19, 2008, quoting Mr. Dugan in a speech to the Enterprise Annual Network Conference.

[39] Based on MBA Delinquency Survey for 2010 Q2, adjusted to reflect MBA's estimated 88percent market coverage.

[40] *Supra* note 3.

[41] *See e.g. In re Ocwen Loan Servicing, LLC Mortg. Servicing Litigation,* 491 F.3d 638 (7th Cir. 2007) (allegations by a class of homeowners that Ocwen systematically charged late fees for payments that were sent on time); *Federal Trade Commission (FTC) Settlement* (2003) resulted in $40 million for consumers harmed by illegal loan servicing practices, *available at* http://www.ftc.gov/fairbanks (FTC alleged, among other things, that Fairbanks illegally charged homeowners for "forced placed insurance" and violated the Fair Debt Collection Practices Act); and *FTC Settlement with Countrywide, available at* http://www.ftc.gov/countrywide (Countrywide agreed to pay $108 million dollars to homeowners in response to the FTC's allegations that Countrywide charged illegal fees to homeowners during Chapter 13 bankruptcy proceedings).

[42] For a thorough discussion of the servicing incentive structure, see Testimony of Diane Thompson before the Senate Banking Committee (Nov. 16, 2010), *available at* http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=df8cb685-c1bf-4eea-941d-cf9d5173873a&Witness_ID=d9df823a-05d7-400f-b45a-104a412e2202 ; *see also* Diane Thompson, "Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior," National Consumer Law Center (Oct. 2009), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/servicer-report1009.pdf.

[43] The Center for Responsible Lending is serving as co-counsel in several cases relating to these issues, including a Maine class action, *Bradbury et al v. GMAC Mortgage, LLC* (Civil Action, Docket CV-2010-494, U.S. Dist. ME). In a related individual case, US Bank v. James (Civil Action, Docket CV-2009-0084, U.S. Dist. ME, Doc. 196 1/31/11), the court recently awarded sanctions to a homeowner required to defend against a motion for summary judgment supported by a falsely sworn affidavit (robo-signing) ruling, "Stephan's actions in this case strike at the heart of any court's procedures, are egregious under the circumstances, and must be deemed worthy of sanctions."

[44] Dodd-Frank sec. 941(b).
[45] See February 16, 2011 letter from Senators Landrieu, Hagan and Isakson to the QRM regulators stating "although there was discussion about whether the QRM should have a minimum down payment, in negotiations during the drafting of our provision, we intentionally omitted such a requirement." See also February 11, 2011 op-ed by Sen. Isakson in The Hill: "In fact, we debated and specifically rejected a minimum down payment standard for the Qualified Residential Mortgage."
[46] The calculation assumes interest paid on savings is offset by increase in home prices.
[47] African-American and Latino 2009 household median incomes were $32,584 and $38,039, respectively. The calculation assumes 15percent federal tax rate and 5percent state tax rate.
[48] U. S. Bureau of Economic Analysis.
[49] Trulia Staten Island Real Estate Overview, http://www.trulia.com/real_estate/Staten_Island-New_York/
[50] Trulia Oakland Real Estate Overview, http://www.trulia.com/real_estate/Oakland-California/
[51] Harvard University Joint Center for Housing Studies tabulations of 2007 Survey of Consumer Finances.
[52] Private mortgage insurance volume as reported by Inside Mortgage Finance Mortgage Market 2009 Statistical Annual
[53] Zandi, The Skinny on Skin in the Game at 3.
[54] Id.
[55] These include better educational achievement (including higher high school graduation rates and higher rates of post-secondary education), and more stable communities. *See* Christopher E. Herbert and Eric S.

Belsky, "The Homeownership Experience of Low-Income and Minority Households: A Review and Synthesis of the Literature," Cityscape: A Journal of Policy Development and Research, Vol. 10, No. 2, U. S. Dep't of Housing and Urban Development, Office of Policy Development and Research (2008) at 40, 43-46; *see also* Raphael Bostic and Kwan Ok Lee, "Homeownership: America's Dream" (Oct. 2007) at 10 (surveying literature).

[56] Testimony by Janneke Ratcliffe, UNC Center for Community Capital before the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, US House of Representatives, Hearing on Future of Housing Finance: The Role of Private Mortgage Insurance. July 29, 2010.

[57] Christopher E. Herbert and Eric S. Belsky, The Homeownership Experience of Low-Income and Minority Households: A Review and Synthesis of the Literature, Cityscape: A Journal of Policy Development and Research, Vo. 10, No. 2, U. S. Dep't of Housing and Urban Development, Office of Policy Development and Research (2008) at 8, citing Orzechowski and Sepielli (2003).

[58] Herbert & Belsky (2008) at 40 (citing Boehm and Schlottmann (1999, 2004c)).

[59] The State of the Nation's Housing 2010. Joint Center for Housing Studies.

[60] Thomas M. Shapiro, Tatjana Meschede, and Laura Sullivan, "The Racial Wealth Gap Increases Fourfold," Institute on Assets and Social Policy, Research and Policy Brief (May 2010) at 1 (citing data from the Panel Survey of Income Dynamics and noting that the wealth gap had quadrupled over the last 25 years).

Zandi, The Skinny on Skin in the Game" http://www.economy.com/mark-zandi/documents/QRM_030911.pdf]