

To: OCC: Docket No. OCC---2011---0002 regs.comments@occ.treas.gov
Federal Reserve: Docket No. R---1411 regs.comments@federalreserve.gov
FDIC: RIN 3064---AD74 comments@FDIC.gov
SEC: File Number S7---14---11 Rule-comments@sec.gov
FHFA: RIN 2590---AA43 RegComments@FHFA.gov
HUD: RIN 2501---AD53 via www.regulations.gov, comment tracking 80ed26f4

From: Chip Halbach, Executive Director, Minnesota Housing Partnership

Date: 8-1-11

Subject: Comment on Interagency Proposed Rule on Credit Risk Retention

Background on Minnesota Housing Partnership

Minnesota Housing Partnership (MHP) is a 501c3 nonprofit organization established in 1989 to promote affordable homes for all Minnesotans and to assist communities create and preserve housing affordable to lower income people. Our board of directors represents housing industry representatives from the nonprofit, public and for profit sectors. Since our incorporation we have assisted over 300 agencies and municipalities in Minnesota. We are also a technical assistance contractor to HUD under HOME, CDBG, McKinney Vento, NSP and One CPD.

Comments on Risk Retention Rule

General

We endorse the work of federal agencies to raise the bar regarding handling of risk within the mortgage industry. This action will facilitate much needed private investment in the homes of Americans. While we are not expert in nuances of securitization of mortgage investment we have witnessed the benefit to residents of Minnesota when it is done well, and, alternatively, the devastation facing families and communities when complex financial structures are inadequately regulated. The success of federal agencies to strike the right balance between flexibility and imposed safeguards is of paramount importance.

Ambiguity of the Impact of Risk Retention Rule

As we investigated the impact of the proposed rule we came to understand that the fundamental role of a Qualified Residential Mortgage (QRM) was not clear to many housing providers and advocates. Did rule drafters intend to have risk retention qualifying mortgages serve as the norm for borrowers, and the QRM mortgage as the rare exception? Or is it the opposite, with the QRM becoming the norm? If the QRM is to become the norm then it is critical that QRM criteria be modified in a manner recommended below so that potential first time homebuyers are not shut out of the mortgage market. If non-QRM loans are to be the norm then the cost of risk retention must be modest or the organizational exceptions to risk retention requirements must be expanded.

QRM as the Norm

First and foremost, the requirement of a 20 percent down payment is excessive; it will undercut the ability of lower income families to become homeowners. This high down payment requirement is not needed to achieve low default rates.

The reports we have seen lead us to believe that the variety of factors that go into sound underwriting and the incorporation of homebuyer education will lead to acceptable default levels with lower down payment

requirement than the 20 percent included in the draft rule. If the rule drafters have evidence to the contrary they should make it available.

Likewise, the refinancing standards of 30 percent and 35 percent (cash out refinancing) will unduly restrict the utility of home ownership. There is a significant difference in the use of home equity as the mechanism for a personal ATM, and a home owner's ability to draw upon that equity to finance an education or support a small business. The rule should be more nuanced in refinancing requirements based on default experience for different borrowing purposes.

The debt to income ratios specified (28 percent and 36 percent) should be reconsidered in light of recent research. In her April 14 testimony before the House Subcommittee on Capital Markets and Government Sponsored Enterprises, Ellen Harnick of the Center for Responsible Lending suggested that research reports showed that the debt to income standards in the proposed rule were overly restrictive.

With the release of loan underwriting standards (QM, or Qualifying Mortgage) incorporated into regulation Z, it is important that the QRM standard be based on loans that are so underwritten. QRM should dictate requirements for downpayment but other underwriting requirements should be part of QM, and not QRM. Furthermore, a mandated QM standard for underwriting should reduce the need for a 20 percent downpayment.

Finally, we recommend a different treatment of downpayment assistance under the proposed rule. Loans that do not increase current debt service, like "equity participation loans," should count as equity, and be included in the downpayment calculation. Likewise, nonprofit land ownership (such as by a community land trust), providing a land lease with minimal to no rent required, should qualify as downpayment. It is important that proven loan products that reach communities of color and low income populations fit under QRM standards. (Further, the QRM standard should also be designed to work for discounted principal repayment loans, i.e., loans repaid without interest, being used for some Muslim homebuyers.)

Non-QRM as the Norm

Before a regulatory structure is adopted dependent upon non-QRM loans to be the primary source of home lending it is important that the added cost of the risk retention requirement be better understood. There appears to be a wide variance in the predicted added costs placed upon lenders subject to the risk retention rule. The rule should not be adopted until there is greater agreement in the mortgage industry of the likely cost.

If the cost is relatively high (such as adding more than one half of a percent to interest rates charged by non-QRM lenders) there should be a post-receivorship exemption for Fannie Mae and Freddie Mac or their public-agency successors. The management of risk and the capital required of government sponsored enterprises should be established by the federal government apart from the rule for non-QRM loans.

It is our understanding that loans made by state housing finance agencies would be exempt from the risk retention requirement. We believe that such an exemption will benefit lower income homebuyers and is warranted based on the track record of these agencies reaching low income homebuyers while experiencing low rates of default.

The contact for these comments is: Chip Halbach, Executive Director, Minnesota Housing Partnership, 651-925-5547, chalbach@mhponline.org.