



November 22, 2010

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Tom Vilsack
Secretary
U.S. Dept. of Agriculture
1400 Independence Ave., SW, Rm. 200-A
Washington, DC 20250

The Honorable Shaun Donovan
Secretary
U.S. Dept. of Housing & Urban Dev.
451 Seventh Street, SW
Washington, DC 20410

The Honorable Ben S. Bernanke
Chairman, Board of Governors
Federal Reserve System
20th St. & Constitution Ave. NW
Washington, DC 20551

The Honorable Eric K. Shinseki
Secretary
U.S. Department of Veterans Affairs
810 Vermont Ave., NW, Room 1000
Washington, DC 20420

Gentlemen:

Recently, the Mortgage Bankers Association¹ (MBA) submitted the attached letter to the federal financial regulators responsible for developing the risk retention regulations under the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).²

Among other points, MBA urged the regulators to synchronize the definition of the Qualified Residential Mortgage (QRM) exemption for risk retention purposes (as required by Section 941 of the DFA) with the Qualified Mortgage (QM) definition (under the “ability to repay” provisions of Section 1412 of Title XIV of the DFA). We also urged that the timelines for drafting, proposing, issuing for public comment, finalizing and implementing both regulations concerning these definitions be coordinated now – so they are concurrent rather than sequential.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

²Sec. 941, Public Law 111-203, (July 21, 2010)

For your consideration, MBA would like to outline some of the reasons for this position:

- 1. The purposes and criteria for both definitions are similar; establishing the definitions in a consistent and simultaneous manner not only will help mitigate implementation costs, but will also help lessen the ongoing compliance costs to lenders and ultimately consumers.** Under DFA, both the QRM definition, to be established under the risk retention provisions, and the QM definition, to be established under the ability to repay provisions, are to be developed for essentially the same purpose – to facilitate underwriting of sustainable mortgages – and contain similar criteria.³ Loans that meet the QRM definition will be excepted from requirements that a portion of credit risk be retained by the securitizer, and loans meeting the QM definition will be presumed to comply with the ability to repay provisions, therefore most lenders most of the time will originate loans that fit in both definitions in order to minimize risk and maximize secondary marketing options. For this reason, in order to avoid confusion and lessen unnecessary regulatory burden and costs, both definitions should be consistent. A consistent definition for QM and QRM would also help mitigate implementation and supervisory oversight costs.
- 2. The provisions are linked under DFA; the QRM provisions explicitly restrict the regulators from defining QRM to be broader than the QM definition.**⁴ There is room for reasonable discussion about what this directive means, e.g., whether on balance the QRM definition may not cover more loans, whether its terms must be at least the same if not more restrictive, or whether there is another better interpretation. In any case, however the restriction is ultimately applied, this restriction links the two definitions and necessitates that both be developed together. Otherwise, were the QRM definition developed ahead of the QM definition, later adjustment of the QRM definition would likely be required.
- 3. Subject to the restriction in 2 above, regulators have wide discretion to craft both definitions and can use this discretion to facilitate consistency.** While DFA establishes criteria for regulators on the points to be addressed in developing the QM and QRM definitions, there is wide latitude for the regulators to make their own determinations of specific requirements subject only to the requirement that the QRM definition can be no broader than the QM definition. Regulators should use their respective discretion to facilitate consistency. For example, a key difference between the QM and QRM definitions is that one of the criteria for a QM is that points and fees payable in connection with a loan not exceed three percent of the total loan amount. DFA is clear that the Board of Governors of the Federal Reserve System (and its successor for purposes of implementation of the QM provisions, the Consumer Financial Protection Bureau) “may revise, add to, or subtract from these criteria that define a [QM] upon a finding that such regulations are necessary or

³ The QRM is to contain criteria such as: documentation, borrower debt to income standards, requirements to mitigate payment shock on adjustable rate mortgages, mortgage insurance or other credit enhancement to the extent it reduces the chance of default, and prohibitions on loan features that demonstrate a higher risk of borrower default. See the Securities Exchange Act at SEC.15 G(e)(4)(B)), as amended by Sec. 941 of Public Law 111-203 (July 21, 2010). Similarly, a “qualified mortgage” also is to include requirements for verification and documentation of income, underwriting based on fully amortizing payment schedules, guidelines or regulations established by CFPB relating to ratios of total monthly debt to monthly income or alternative measures of borrower’s ability to pay regular expenses after payment of total monthly obligations, as well as a three percent limit on points and fees. See Subsection (b)(2) of Sec. 129C of the Truth in Lending Act, as amended by Sec. 1412, Public Law 111-203 (July 21, 2010).

⁴ The Securities Exchange Act at SEC.15 G (e)(4)(C), as amended by Sec. 941 of Public Law 111-203 (July 21, 2010).

proper to ensure that responsible, affordable mortgage credit remains available to consumers consistent with the purposes of this section..."⁵ Similarly, while the regulators are charged with defining the QRM term, "taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default," they are given wide latitude to determine which features should comprise a QRM. Using their discretion in connection with both provisions, the regulators may determine that the purposes of consistency are better served by excluding the limit on points and fees from both definitions or by modifying it and/or establishing other criteria. They could also determine that only the QM definition will contain the points and fees limit but the definitions otherwise will be consistent.

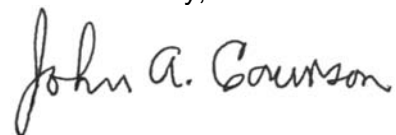
- 4. Finalizing both definitions in a coordinated manner on the same schedule will help facilitate consistency.** If deliberations are coordinated and on the same schedule, regulators are more likely to hear similar views to help shape both definitions. They are also more likely to be afforded a greater opportunity to determine how best to use their discretion to ensure consistency between the definitions.
- 5. Finalizing both definitions on the same schedule will speed the process of implementing better underwriting standards to ensure sustainable mortgage lending.** DFA requires final risk retention rules, including its QRM provisions, no later than 270 days after enactment of the law, which is April 1, 2011. Since it does not require implementation of the ability to repay provisions until no later than 18 months after the transfer date (or January 2013), putting the QM rules on the same schedule will speed efforts to implement new underwriting requirements for sustainable lending.
- 6. Finalizing both definitions on the same schedule will speed the return of private capital to the mortgage markets.** Investors can be expected also to insist ordinarily on the satisfaction of both definitions to lessen the possibility of liability and increase the value of securitized assets. The implementation of both definitions at the earliest possible date will help speed the return of private investment capital to the mortgage markets.
- 7. Establishment of both definitions as promptly as possible is likely to advance thinking about loans that do not meet the definitions.** While it is anticipated that most lenders will only offer and underwrite loans meeting the QM and QRM definitions, many transactions will fall outside of the QM's and QRM's strictures. Timely and consistent implementation of the QM and QRM definitions also will speed regulators' consideration of any requirements for transactions outside the definitions in light of safety and soundness or consumer protection concerns.

In sum, we believe there are numerous reasons, including those we have highlighted, to synchronize the QRM and QM definitions and put their implementation timelines on the same track. First and foremost, doing so will, in our judgment, better protect consumers and return private capital to the mortgage market.

We would welcome the opportunity to discuss this critical issue further. Please contact us if you have any questions.

⁵ Subsection (b)(3)(B)(i) of Sec. 129C of the Truth in Lending Act, as amended by Sec. 1412, Public Law 111-203 (July 21, 2010).

Most sincerely,

A handwritten signature in black ink that reads "John A. Courson". The signature is written in a cursive, flowing style.

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

Attachment

CC: Edward J. DeMarco, Acting Director, Federal Housing Finance Agency
John G. Walsh, Acting Comptroller, Office of the Comptroller of the Currency
The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation
John E. Bowman, Acting Director, Office of Thrift Supervision
The Honorable Mary L. Schapiro, Chairman, Securities and Exchange Commission