



Credit Union National Association

cuna.org

**BILL CHENEY**  
President & CEO

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-508-6745 | **FAX:** 202-638-3389

June 17, 2013

Mr. Edward J. DeMarco, Acting Director  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, D.C. 20024

Re: Enterprise Purchase of Non-Qualified Mortgages and Freddie Mac  
Minimum Activity Threshold Requirements

Dear Director DeMarco:

The Credit Union National Association (CUNA) is writing to you regarding two recent actions of the Federal Housing Financial Agency that could hamper the ability of credit unions to meet the needs of their members for home mortgage loans. By way of background, CUNA is the nation's largest credit union trade organization, representing state and federal credit unions, which serve more than 96 million members.

### **Ability of Enterprises to Purchase Non-“Qualified Mortgages”**

CUNA has serious concerns with FHFA's decision, in its role as conservator of Fannie Mae and Freddie Mac (the Enterprises) and announced in a news release on May 6, 2013, to prohibit the Enterprises from purchasing mortgages that do not meet the definition of “Qualified Mortgages (QM)” established by the Consumer Financial Protection Bureau (CFPB). The prohibition would become effective when the CFPB's Ability-to-Repay rule becomes effective, in January 2014.

CUNA recognizes that FHFA will allow the Enterprises to continue to purchase loans that meet the underwriting requirements stated in their respective selling guides, including loans with debt-to-income ratios above 43 percent and we commend that decision.

However, loans with terms that do not exactly match certain CFPB QM requirements, such as 40-year loans, or loans with points and fees exceeding the thresholds established by the rule, will not be purchased by the Enterprises.

CUNA is concerned that FHFA's decision will prevent credit unions from working with their members to customize financial products that meet their individual needs. The ability of credit unions to customize their products is important because, as member-owned, democratically controlled financial



PO Box 431 | Madison, WI 53701-0431 | 5710 Mineral Point Road | Madison, WI 53705-4454 | **PHONE:** 608-231-4000

institutions, credit unions understand that every member brings different circumstances to a home purchase transaction. Credit unions have a statutory mission to extend credit to their member-owners and always look to exhaust every option in order to satisfy a member's needs. Therefore, creating a loan product that fits the needs of the individual and their particular set of circumstances will, at times, lead to terms of the loans that fall outside of the QM box. The FHFA decision leaves the impression in the minds of many credit unions that this kind of individualization is no longer welcomed.

FHFA's action would also have an especially great impact with mortgage issuance at lower price points. For low-balance mortgage loans, points and fees can quickly exceed the statutory threshold. Yet, those loans are precisely the ones needed in neighborhoods with the most affordable housing.

Restricting access to credit was never the CFPB's intent when it created the QM standard, nor was it the intent of Congress when it passed the Dodd-Frank Act. However, CUNA is concerned that FHFA's decision could do precisely that, adversely impacting Americans who need the flexibility credit unions provide to their members the most. Indeed, CFPB Director Richard Cordray has noted the importance for the continued availability of non-QM loans. Recently, he told a gathering:

Qualified Mortgages cover the vast majority of loans made in today's market, but they are by no means all of the mortgage market. This point is quite important, and it should not be misunderstood. Those lenders that have long upheld strong underwriting standards have little to fear from the Ability-to-Repay rule. These lenders, including many of our community banks and credit unions, have seen the strong performance of their loans over time. Nothing about their traditional lending model has changed, and they should continue to offer such mortgages to borrowers whom they evaluate as posing reasonable credit risk – whether or not they meet the criteria to be classified as Qualified Mortgages. We all benefit by recognizing and sustaining responsible lending wherever we find it in the mortgage market.<sup>1</sup>

Credit unions have traditionally originated high quality mortgage loans with stringent underwriting standards, and have had lower default rates than most banks during the recent economic crisis. At credit unions, the highest annual loss rate on residential mortgages was 0.4% during the Great Recession. At

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<sup>1</sup> See <http://www.consumerfinance.gov/speeches/director-richard-cordray-at-the-national-association-of-realtors/>

commercial banks, the similarly calculated loss rate exceeded 1% of loans for three years, reaching as high as 1.58% in 2009. In other words, even if their mortgage falls on the wrong side of the bright line that is the QM rule due to the terms of the note, the mortgage from a credit union member should be more, not less, desirable to the Enterprises, because their default risk is lower.

CUNA believes the net effect of FHFA's decision will be to restrict access to credit for qualified credit union members who need lending flexibility, and we strongly urge FHFA to reconsider its decision regarding the purchase of non-QM loans.

### **Freddie Mac Minimum Purchase Requirements**

CUNA is similarly concerned about the announcement May 15, 2013, from Freddie Mac in Bulletin Number 2013-8. The announcement states that beginning January 1, 2014, a seller/servicer that does not meet minimum activity thresholds for the prior calendar year will be assessed a fee of \$7,500. A seller/servicer must sell mortgages to Freddie Mac that have an aggregate unpaid principal balance of more than \$5 million during the preceding calendar year to avoid the fee. Alternatively, a servicer or servicing agent for Freddie Mac must service mortgages that have an aggregate unpaid principal balance of at least \$25 million as of December 31 in the prior calendar year or be subject to the fee.

This policy will adversely affect many small credit unions across the country. The fee unfairly burdens credit unions in rural and underserved areas where annual real estate sales and housing prices may not be high enough to generate the dollar figures that meet Freddie Mac's thresholds. This harms the credit unions that can afford the fee the least, and will divert revenue that could be directed to other activities to serve credit union members. Coupled with the regulatory requirements of today's mortgage market, the fee could contribute to some credit unions leaving the mortgage business altogether, restricting access to credit to millions of Americans.

The basis for the fee is questionable as applied to credit unions. According to Freddie Mac, the low activity fee is intended to support Freddie Mac's "risk management efforts and offset the costs incurred to maintain Seller/Servicers, and monitor their continuing compliance with [Freddie Mac's] eligibility requirements." However, as noted above, the credit quality of credit union mortgages is extraordinarily high, and risk of default significantly lower than mortgages from commercial banks. While we appreciate Freddie Mac's responsibility to the taxpayer while it is in conservatorship, credit unions have not generated widespread losses to Freddie Mac, and should not be asked to pay a fee ostensibly for "risk management."

The losses which Freddie Mac has experienced in the past five years were not caused by credit unions, and credit unions should not be asked to bear the burden of others. CUNA urges FHFA to remove the Freddie Mac minimum activity threshold fee, or in the alternative, exempt credit unions from the fee.

We appreciate your attention to our concerns. If you have any questions concerning our letter, please feel free to contact me or CUNA's Deputy General Counsel Mary Dunn at or 202-508-6736.

Best regards,

A handwritten signature in black ink, appearing to read "Bill Cheney", with a long, sweeping horizontal line extending to the right.

Bill Cheney  
President & CEO