ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

September 8, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
Comment Intake
1700 G Street NW
Washington, DC 20552

Re: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Docket No. CFPB-2020-0020, RIN 3170-AA98

Dear Director Kraninger,

The Independent Community Bankers of America ("ICBA")[1] welcomes the opportunity to comment on the notice of proposed rulemaking ("NPR") published by the Consumer Financial Protection Bureau ("CFPB" or "Bureau") that would include certain amendments to the General Qualified Mortgage ("QM") loan definition established by Regulation Z. The Bureau proposes to amend the General QM definition to replace the debt to income ("DTI") limit with a price-based approach along with the removal of Appendix Q, which details how creditors must document a borrower's income and assets to determine their ability to repay.

This NPR was released simultaneously with another proposed rule that would extend the Temporary Government Sponsored Enterprises ("GSE") QM loan definition ("GSE Patch"). The CFPB seeks to transition away from the GSE Patch and to "to ensure access to responsible, affordable mortgage credit upon its expiration."[2] Absent any changes, the GSE Patch will

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $5 trillion in assets, nearly $4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.
[2] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule_general-qm-loan-definition_2020-06.pdf

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remain in effect until January 10, 2021 or the date the GSEs exit conservatorship, whichever occurs first.

ICBA appreciates that the Bureau is attempting to facilitate a more competitive, transparent, and level playing field in the mortgage markets while "ensuring a smooth and orderly mortgage market throughout its consideration of these issues and any resulting transition away from the GSE Patch."[3] In the NPR, the Bureau is proposing a price-based General QM loan definition to replace the DTI-based approach. The pricing approach is based on the assumption that a loan's price, as measured by comparing a loan's annual percentage rate ("APR") to the average prime offer rate ("APOR") for a comparable transaction, is a reliable indicator of a consumer's ability to repay ("ATR") and is a more holistic and flexible measure than DTI alone.

As explained below, ICBA has strong concerns about relying primarily on a pricing approach as an indicator of risk and a borrower's ability to repay. Our recommendations include maintaining a DTI cap in order to prevent the rise of unsafe and unaffordable QM loans and adjusting the current safe harbor designation threshold of 150 basis points to match the proposed QM threshold of APOR + 200 basis points.

Background

In January 2013, the CFPB issued its final Ability to Repay and QM Standards rule that implemented relevant sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and amended Regulation Z.[4] The Dodd Frank Act stipulated that QM loans cannot be negatively amortizing, have fees that add up to more than 3 percent of the loan amount, have a balloon payment, or have terms greater than 30 years. The CFPB's corresponding ATR/QM rule became effective on January 10, 2014 and has had a profound impact on mortgage lending for all lenders and mortgage borrowers alike.

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[3] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-steps-address-gse-patch/
[4] https://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf

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The final rule requires all creditors to make a reasonable and good faith determination of a borrower's ability to repay their mortgage loan, including any other mortgage-related obligations such as property taxes, and to document and verify the information used in making that determination. The rule further describes the methods and types of information to be collected by the creditor to verify and validate the borrower's ability to repay the loan. The Bureau included Appendix Q in the final QM/ATR rule that provided detailed requirements for documenting and validating a borrower's ability to repay, including income and employment information, assets, outstanding debts, and credit history. The Bureau also specified a maximum debt-to-income ratio of 43 percent and required that the annual percentage rate may not exceed 150 basis points over the average prime offer rate. Loans meeting these requirements are deemed to be QM and provide creditors a legal safe harbor protection against borrower litigation. While providing a legal safe harbor to creditors was not required by the statute, the Bureau recognized that access to credit would be severely impacted if creditors were concerned with large numbers of consumers pursuing legal claims regarding their ability to repay their mortgage loan.

The 2013 ATR/QM rule also created a temporary category of loans eligible for guarantee or purchase by GSEs to be QM loans – the GSE Patch- with a legal safe harbor, set to expire the earlier of seven years after implementation or when the GSEs exited conservatorship. Lenders that originate and sell their mortgage loans to the GSEs therefore enjoy legal protections from liability against borrowers seeking damages. The GSE Patch has since facilitated access to homeownership for nearly 3.3 million creditworthy borrowers who exceeded the 43 percent debt-to-income QM threshold and together represent nearly 20 percent of the loans guaranteed by the GSEs over the last decade.[5] A study shows that the GSE Patch accounted for roughly 16% or nearly $260 billion in 2018 total loan origination volume.[6]

ICBA Summary and Analysis of NPR

The NPR seeks to remove the 43 percent DTI limit, replacing it with a pricing approach that will allow a loan to achieve QM status if the APR exceeds the APOR for a comparable transaction by

[5] https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch
[6] https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-1.aspx

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less than two percentage points. Additionally, the NPR would remove Appendix Q but still require a mortgage lender to "(1) consider the consumer's income or assets, debt obligations, alimony, and child support, and monthly DTI ratio or residual income, and (2) verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support."[7] The proposal does not specify a DTI limit, however.

The Bureau is proposing to eliminate the 43 percent DTI limit because it is concerned that, after the expiration of the GSE Patch, the 43 percent DTI limit could result in a significant decrease in access to credit. More broadly, the Bureau suggests that imposing a DTI limit at all, in conjunction with prescriptive definitions of what qualifies as debt or income (see Appendix Q), would be overly burdensome, restrictive, and complex in practice.

The NPR goes into detail about the positive and negative aspects of both the DTI and the pricing approach. It fully recognizes the well-documented concerns regarding the latter, many of which ICBA has raised in previous letters[8]. The Bureau acknowledges, for example, the sensitivity of a price-based QM definition to macroeconomic cycles, with its pro-cyclical tendencies allowing more QM access during market expansion and restrictive access when credit is tight. Furthermore, the Bureau also admits that a price-based approach would allow and incentivize some creditors to price loans just under the threshold so that the loans will receive the presumption of compliance that comes with QM status. The NPR also rightly points out that pricing is primarily based on a creditor's expected revenues rather than a consumer's ATR. A DTI calculation, while imperfect, is relatively consistent over time and across creditors while a pricing approach is more variable and more easily manipulated by factors unrelated to ATR.

Despite the above drawbacks, the Bureau ultimately appears to believe a pricing approach is preferable due to its holistic nature, flexibility, and ease of implementation. At the same time, most of the concerns enumerated in the NPR related to DTI are based on the consequences of keeping the 43 percent threshold. ICBA agrees that the 43 percent DTI threshold is not appropriate and will undoubtedly be too restrictive. The Bureau further recognizes the

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[7] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule_general-qm-loan-definition_2020-06.pdf, p. 59.

[8] https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/icba-qm-anpr-cfpb-2019-0039.pdf?sfvrsn=6dc05317_0

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potential benefits of a hybrid approach, retaining a range of DTI thresholds above the 43 percent and potentially using the underwriting systems of the GSEs or other Bureau-approved systems in lieu of the burdensome Appendix Q.

ICBA Recommendations

The Bureau should include a DTI cap as a necessary requirement to achieve QM.

If the CFPB adopts a pricing approach in its final rule, ICBA recommends the Bureau maintain a DTI limit or range in order to prevent the proliferation of unsafe and unaffordable QM loans. ICBA has consistently argued that the DTI ratio metric should remain in some form as a measure of ability to repay. The DTI ratio has been a part of sound mortgage underwriting for decades, and while it may not be a perfect indicator of a borrower's ability to repay, when used with other factors of the borrower's financial situation, it helps complete a picture of the borrower's ability to reasonably repay their loan. Citing the inflexibility of a set 43 percent DTI, ICBA has argued for allowing a range of percentages (43-45 percent) that would denote a QM safe harbor designation, and a provision for a higher DTI range (45-50 percent) that would result in rebuttable presumption of QM. Loans with DTI ratios in excess of the 50 percent level should be considered non-QM.

As currently proposed, the pricing approach in this NPR would grant QM safe harbor status to a loan with a 100 percent DTI as long as the lender considered and verified the borrower's income, assets, and debts and if the APR on that loan was within 150 basis points over the APOR. ICBA strongly believes this will lead to an erosion of credit standards and a return to "no-ratio" loans to borrowers who cannot afford them

In previous letters, ICBA also recommended a substantial overhaul or replacement of Appendix Q to include compensating factors that could be considered when analyzing a borrower's ability to repay. These measurable compensating factors include: demonstrated ability to save, demonstrated ability to devote a higher percentage of income to housing, other borrower

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assets which could be liquidated to pay the loan, and demonstrated ability to manage credit in determining ability to repay.[9]

The Bureau should move QM and Safe Harbor to APOR + 200 bps

The Bureau requests feedback on whether the rule should keep the current thresholds separating "safe harbor" from "rebuttable presumption" General QM loans and specifically requests feedback on whether the Bureau should adopt higher or lower safe harbor thresholds. As proposed, the NPR would keep the safe harbor at 150 basis points over APOR, rather than increasing the threshold to 200 basis points, which would make it consistent with the QM threshold. As you know, lenders generally make a determined effort to only offer safe harbor loans. Therefore, whatever APOR threshold is set for the safe harbor will become the principal threshold for the QM market. ICBA argues that QM loans are, almost by definition, prime loans. The pricing approach discussed in the NPR stipulates that QM status should be given to loans with an APOR spread at +200 basis points. The misalignment between the QM definition and the safe harbor will distort the market, leaving consumers with fewer credit access options. Further, if the Bureau adds a DTI cap as recommended above, aligning the QM definition and safe harbor will address both the access to credit issue and the ATR issue with little or no disruption once the QM patch is removed.

ICBA appreciates the opportunity to comment on the NPR and looks forward to working with the CFPB throughout the process of finalization and implementation. If you have any questions regarding this letter, please contact me at ron.haynie@icba.org.

Sincerely,

/s/

Ron Haynie
Senior Vice President, Mortgage Finance Policy

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[9] Ibid.

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