



MORTGAGE BANKERS ASSOCIATION

September 8, 2020

Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>

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

Re: Request for Comment: General QM Loan Definition  
Docket No. CFPB-2020-0020; RIN 3170-AA98

Dear Director Kraninger:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule to amend its General Qualified Mortgage (QM) loan definition in Regulation Z.<sup>2</sup> MBA commends the Bureau for this proposal and its commitment to ensure the continued availability of sustainable, affordable mortgage credit, while maintaining robust standards for high-quality QMs.

#### I. Introduction

The Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule represents one of the most important mortgage regulations promulgated by the Bureau pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Efforts to revise the Rule, particularly efforts as extensive as those reflected in the proposed rule, will have significant implications for the housing finance system. MBA applauds the Bureau for the thorough

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<sup>1</sup> 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, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to 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 2,100 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

<sup>2</sup> Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 (July 10, 2020).

approach it has taken to this critical rulemaking, which has involved extensive outreach to industry and consumer groups, receptiveness to stakeholder feedback, and a commitment to a data-driven process.

The proposed revisions to the General QM definition, as well as the proposed short-term extension of the government-sponsored enterprise (GSE) Patch, reflect an appropriate careful consideration of the Bureau's statutory duties and the goals of the ATR/QM Rule. In the comments that follow, MBA explains its support for the price-based QM construct proposed by the Bureau and offers several recommendations to help ensure the rule meets its stated goals of robust consumer protections and broad access to sustainable credit.<sup>3</sup> Specifically, MBA:

- Supports the Bureau's proposal for a QM construct based on a spread of loan price against the average prime offer rate (APOR) benchmark;
- Supports the Bureau's proposal to eliminate debt-to-income (DTI) ratio as a standalone factor for eligibility under the General QM definition;
- Offers recommendations to clarify the eligibility criteria for the proposed General QM definition;
- Recommends that the Bureau raise the proposed rate spread threshold that designates a conclusive presumption of ATR compliance (safe harbor) for QM loans;
- Recommends that the Bureau remove the special rule for determining QM eligibility for certain adjustable-rate mortgages (ARMs); and
- Offers recommendations to ensure a successful implementation of the revisions to the General QM definition.

While MBA supports the Bureau's proposal, we recognize that the unique dynamics of the subordinate-lien market may require a different approach. Specifically, price-based QM eligibility criteria may be underinclusive—*i.e.*, have the effect of denying QM status for subordinate-lien loans to borrowers with the ability to repay—when applied to the subordinate-lien market. Accordingly, MBA's assessment of the proposal is primarily based on its impact on the first-lien mortgage market, and our comments below reflect that perspective.

## II. Summary of the Proposed Rule

The proposed rule, issued to address some of the concerns prompted by the scheduled expiration of the GSE Patch on January 10, 2021, reflects important changes to the General QM definition. Specifically, the Bureau proposes to replace the General QM's 43 percent DTI

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<sup>3</sup> Throughout this comment letter, we use "price," "price-based construct," or similar phrases while discussing the APR to APOR measure proposed by the Bureau. Price should be understood as referring to a loan's cost to the borrower, specifically the interest rate and fees—*i.e.*, the loan's APR.

ratio threshold with a new QM construct based on loan price. Under the proposal, a loan would meet the General QM requirements if the loan's annual percentage rate (APR) is within 2.0 percentage points of APOR for a comparable transaction. The proposal provides higher thresholds for smaller loans (3.5 percentage points for first-lien loans greater than or equal to \$65,939 but less than \$109,898 and 6.5 percentage points for first-lien loans less than \$65,939) and for subordinate-lien transactions (3.5 percentage points for subordinate-lien loans greater than or equal to \$65,939 and 6.5 percentage points for subordinate-lien loans less than \$65,939).

The proposal would retain the existing QM limits on product features and points and fees, as well as underwriting provisions related to "consider and verify" requirements for borrower debts and income found in the ATR/QM Rule. Appendix Q would be removed and, to minimize uncertainty, the Bureau would clarify "consider and verify" standards, potentially adopting a safe harbor for their use. Additionally, the proposal would preserve the current threshold separating safe harbor QM loans from those with a rebuttable presumption of ATR compliance, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points (3.5 percentage points for subordinate-lien loans) as of the date the interest rate is set.

### III. Support for the Proposed Rule's Price-Based QM Construct

#### a. Proposal is Consistent with TILA's Statutory Goals

Under the Dodd-Frank Act amendments to the Truth in Lending Act (TILA), the ATR/QM Rule has two broad goals: (1) to "assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans"<sup>4</sup> and (2) to "[ensure] that responsible, affordable mortgage credit remains available to consumers."<sup>5</sup> The price-based General QM framework proposed by the Bureau is faithful to these goals. As explained below, loan price, measured by comparing a loan's APR to the APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay. The use of loan price, moreover, will maintain access to credit for borrowers currently served by the GSE Patch, while also providing opportunities to expand credit outreach to underserved market segments through responsible innovation. In this way, the Bureau's price-based QM standard strikes an appropriate balance between promoting access to credit and protecting consumers from unsustainable mortgages.

#### b. Loan Price is a Strong Proxy for Statutory Ability to Repay Factors

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<sup>4</sup> 15 U.S.C. 1639b(a)(2).

<sup>5</sup> 15 U.S.C. 1639b(a)(1).

When determining a mortgage loan's price, creditors must quantify credit risk—*i.e.*, the probability that the borrower will fail to repay the loan's principal and interest. The creditor considers a range of factors, each based on verified information, to perform this assessment. These factors often include the borrower's debts, income, and residual income; the borrower's DTI ratio; the borrower's assets; the borrower's employment status and employment history; and the borrower's credit history and credit scores. Based on these factors, the creditor makes a determination as to the borrower's probability of default or, stated differently, the borrower's ability to repay. Borrowers with a relatively higher probability of default (lower ability to repay) typically receive higher interest rates or are required to pay higher loan fees to reflect this risk. The APR, a measure that reflects a loan's interest rate and fees, for such loans would be comparatively higher than the APR for a similar loan to a lower-risk borrower.

In this way, the process of determining loan price for the vast majority of loans involves a comprehensive assessment based on as much relevant information as can be gathered and verified regarding a borrower's ability to repay. The factors considered in the pricing determination include many, if not all, of the statutory factors found in TILA's ability to repay provision (*e.g.*, credit history, current income, employment status, DTI ratio, etc.).<sup>6</sup> This process makes the resulting product of this determination, the loan price expressed as the APR, a much stronger proxy for a borrower's ability to repay than a single, stand-alone factor, such as a DTI ratio or residual income. Loan price is thus an appropriate basis for determining eligibility for QM status, as it is a holistic measure of a consumer's ability to repay that closely reflects the statutory ATR factors.

c. Loan Price is a Strong Indicator of Borrower Ability to Repay

Loan price is a measure that captures the borrower's credit score, income, debts, assets, DTI ratio, and other strongly correlated indicators of a borrower's risk of default. In theory, therefore, a loan's price, as reflected by its APR, should provide a relatively accurate reflection of a borrower's ability to repay. In fact, the Bureau's analysis of loan performance data and similar analysis performed by CoreLogic bear this out. These data indicate that loan pricing, measured by the APR spread over APOR, correlates with loan performance, as measured by early delinquency rate (defined as 60 or more days past due at least once within two years of origination). As the proposed rule describes in detail, "the Bureau's own analysis and recent analyses published in response to the Bureau's ANPR (advance notice of proposed rulemaking) and RFIs (requests for information) provide strong evidence of increasing early delinquency rates with higher rate spreads across a range of datasets, time periods, loan types, measures of rate spread, and measures of delinquency."<sup>7</sup> Similarly, CoreLogic's analysis

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<sup>6</sup> 15 U.S.C. 1639c(a)(3).

<sup>7</sup> 85 Fed. Reg. 41716, 41732 (July 10, 2020).

of 2018 Home Mortgage Disclosure Act (HMDA) data, which reflect significantly greater loan-level detail than pre-2018 HMDA data, including rate spreads and DTI ratios, found “notable increases in loan delinquency as rate spreads increased[,]” with each higher rate spread bin corresponding with an increase in early delinquency rates.<sup>8</sup> Having reviewed these and other studies, the Bureau’s proposed rule concludes “this evidence suggests that higher rate spreads—including the specific measure of APR over APOR—are *strongly correlated* with early delinquency rates.”<sup>9</sup>

d. A Price-Based QM Construct Maintains Access to Credit for Much of the Market Segment Currently Served by the GSE Patch

While ensuring a consumer’s ability to repay is a critical element of the ATR/QM Rule, it is not the sole requirement. The controlling statute also requires the ATR/QM Rule “[ensure] that responsible, affordable mortgage credit remains available to consumers.”<sup>10</sup> Indeed, ensuring credit availability was a key driver behind the Bureau’s adoption of the GSE Patch. Specifically, the Bureau sought to “ensure access to responsible, affordable credit is available for consumers with debt-to-income ratios above 43 percent[.]”<sup>11</sup>

Experience under the current ATR/QM Rule demonstrates the GSE Patch’s success in meeting this goal. Of the roughly 6.01 million closed-end first-lien residential mortgage loans originated in 2018, the Bureau’s estimates suggest roughly one-sixth, or 957,000 loans representing a total of \$260 billion in originations, benefited from the GSE Patch.<sup>12</sup> According to the Bureau, the share of creditworthy borrowers who depend on the GSE Patch will “continue to comprise a significant proportion of mortgage originations through January 2021[.]”<sup>13</sup>

Consistent with the statutory goal of facilitating access to affordable credit, any replacement for the GSE Patch must account for the large market segment that it serves. As explained in the proposed rule, the vast majority of these borrowers—*i.e.*, primarily borrowers with DTI

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<sup>8</sup> See Archana Pradhan & Pete Carroll, Expiration of the CFPB’s Qualified Mortgage (QM) GSE Patch – Part V, CoreLogic Insights Blog, (Jan. 13, 2020), <https://www.corelogic.com/blog/2020/1/expiration-of-the-cfpbs-qualifiedmortgage-qm-gse-patch-part-v.aspx>.

<sup>9</sup> 85 Fed. Reg. 41716, 41734 (July 10, 2020). (emphasis added).

<sup>10</sup> 15 U.S.C. 1639b(a)(1).

<sup>11</sup> 78 Fed. Reg. 6408, 6533 (Jan. 30, 2013).

<sup>12</sup> Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z), 84 Fed. Reg. 37155, 371595, (July 31, 2019).

<sup>13</sup> 84 Fed. Reg. 37155, 37159.

ratios greater than 43 percent—would qualify for QM lending under the price-based definition proposed by the Bureau.<sup>14</sup>

e. Pricing Construct Expands Access to Credit by Facilitating Innovation

In addition to preserving access to credit for borrowers currently served by the GSE Patch, the Bureau’s proposal to base QM eligibility on loan price would create opportunities for lenders to expand access to credit through innovation in underwriting or efforts to reach populations that currently are underserved. Unlike the existing DTI ratio-based General QM definition, which requires strict adherence to the verification requirements of Appendix Q, the proposed price-based approach would accommodate innovation with respect to loan underwriting and verification. This flexibility creates the potential for lenders to reach borrowers with atypical financial profiles, such as those with non-W-2 income or limited credit history. The risk associated with any innovation, moreover, would be limited by the rate spread threshold, which, at 2.0 percentage points over APOR, leaves little room for excessive risk premia. In other words, while lenders can deviate from traditional industry practices, they must do so in a fashion that the market is willing to accept at similar competitive pricing as loans that are generally understood to not be particularly risky. In this way, the capacity for innovation does not erode the pricing construct’s ATR protections.

IV. Weaknesses of a DTI Ratio-Based QM Construct

Some commenters have suggested that rather than adopting a new, price-based QM standard, the Bureau should address the expiring GSE Patch through revisions to the framework in the existing General QM standard. Such revisions generally entail raising the 43 percent DTI ratio threshold and updating Appendix Q. Others have suggested that the Bureau should adopt a hybrid approach in which eligibility under the General QM standard is based on both loan price and borrower DTI ratios. Approaches that incorporate a DTI ratio threshold, however, are inferior to the price-based construct proposed by the Bureau when weighed against the goals of ensuring consumers’ ability to repay and maintaining access to responsible, affordable mortgage credit, as well as the need to promote compliance certainty.

a. As a Stand-Alone Measure, DTI Ratio is Not a Strong Indicator of Borrower Ability to Repay

While the proposed rule does not directly address the question of which measure—*i.e.*, loan price, borrower DTI ratio, or other options—is most predictive of loan performance, the Bureau’s analysis suggests the answer is loan price. The Bureau assessed rates of early

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<sup>14</sup> “[T]he Bureau estimates that 28,000 low-DTI conventional loans which are QM under the baseline would fall outside the amended QM definition under the proposal, due to exceeding the pricing thresholds in [the proposed rule]” 85 Fed. Reg. 41716, 41769 (July 10, 2020).

delinquency by DTI ratio and loan price for a group of loans originated from 2002-2008 and another group of loans originated in 2018. As indicated in the proposed rule, this study found that “the difference in early delinquency rates between loans with the highest and lowest DTI ratios is smaller than the difference in early delinquency rates between loans with the highest and lowest rate spreads during both periods.”<sup>15</sup> According to the Bureau, this “pattern is consistent with a stronger correlation between rate spread and early delinquency than between DTI ratios and early delinquency.”<sup>16</sup> Such a result should be expected. As previously explained, loan price is the product of an assessment of many factors—*e.g.*, loan-to-value (LTV) ratio, credit score, employment, cash reserves, and DTI ratio—while a DTI ratio threshold represents a stand-alone measure.

b. DTI Ratio-Based QM Construct Does Not Ensure Access to Credit

A DTI ratio-based QM construct is poorly suited to achieving the goal of maintaining consumer access to responsible, affordable mortgage credit. In a market without the GSE Patch, the Bureau estimates that “943,000 High-DTI conventional loans in 2018 would fall outside the QM definition” under the baseline 43 percent DTI ratio threshold.<sup>17</sup> Without access to loans that meet the General QM requirements, these borrowers would face higher borrowing costs, in the form of non-QM or Federal Housing Administration (FHA)-insured lending, or possibly be prevented from accessing mortgage credit entirely.

Some observers have suggested that this problem could be resolved by raising the DTI ratio threshold above the current 43 percent level. While such a solution sounds workable in theory, data suggest it would be unworkable in practice given the weak correlation (relative to other factors) between DTI ratios and loan performance, particularly in the 43-50 percent DTI ratio range. An assessment of historical Fannie Mae loan performance data conducted by the Urban Institute found that moving from the 40-45 percent DTI ratio range to the 45-50 percent range represented just a 7.7 percent increase in loan default risk when controlling for other relevant factors.<sup>18</sup> As the Center for Responsible Lending notes when discussing the practical import of this increase, “DTI [ratio] is so weakly predictive for near-prime loans that

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<sup>15</sup> 85 Fed. Reg. 41716, 41733 (July 10, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> 85 Fed. Reg. 41716, 41768 (July 10, 2020).

<sup>18</sup> Golding, E., Goodman, L., and Zhu, J., “Fannie Mae Raises the DTI Limit: A Win for Expanding Access to Credit,” Urban Institute, July 2017 at pg. 7. Available at: [https://www.urban.org/sites/default/files/publication/91936/fannie\\_mae\\_raises\\_dti\\_limit.pdf](https://www.urban.org/sites/default/files/publication/91936/fannie_mae_raises_dti_limit.pdf).

for a thousand borrowers between 45% and 50% DTI, just two additional borrowers default, not nearly enough to warrant denying QM protections to the remaining borrowers.”<sup>19</sup>

c. DTI Ratio-Based QM Construct Lacks Necessary Compliance Certainty

Along with ensuring consumers’ ability to repay and maintaining access to mortgage credit, a well-designed QM framework must offer compliance certainty. Specifically, creditors and secondary market participants must be able to determine whether a particular loan is a QM. The Bureau confirmed the importance of compliance certainty in the ATR/QM Rule Assessment Report. The Report identified the compliance certainty associated with the GSE Patch, and the perceived lack of clarity in the General QM definition, as key factors contributing to the unexpectedly “large and persistent market share of Temporary GSE QM” loans.<sup>20</sup>

Conceptually, the need for compliance certainty makes sense. The QM construct is, in plain terms, protection for creditors and subsequent assignees from liability for ATR violations in exchange for adherence to strict loan parameters. Experience under the current rule, in particular the small size of the non-QM and rebuttable presumption QM markets, confirms the market’s minimal appetite for uncertainty in a loan’s ATR compliance risk and the perceived importance of the QM safe harbor. It is, therefore, understandable that creditors and secondary market participants would want strong assurances that a loan qualifies for the QM safe harbor. In other words, a QM safe harbor does not achieve its intended goal unless creditors can clearly determine when they have obtained this safe harbor.

Clear, bright-line requirements also provide protection from liability. Unlike more flexible, subjective standards (*e.g.*, “reasonable,” “appropriate,” etc.), which are open to interpretation, it is difficult to argue whether a loan failed to satisfy a bright-line standard. Whether a loan did or did not meet such requirements is clear. Compliance with a flexible, subjective standard, however, creates uncertainty, exposing the lender or subsequent assignee to an increased risk of future legal challenge, and to the costs of defending that challenge.

In weighing how best to provide bright-line standards that offer compliance certainty, the Bureau should find the market’s experience under the existing QM framework instructive. If, as with the current General QM definition, eligibility for the QM safe harbor is based on a

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<sup>19</sup> Stein, E. and Calhoun, M., “A Smarter Qualified Mortgage Can Benefit Borrowers, Taxpayers, and the Economy,” Center for Responsible Lending, July 2019, at pg. 9. Available at: <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-a-smarter-qualified-mortgage-july2019.pdf>. All the concerns raised throughout these comments regarding the difficulties and rigidity of Appendix Q would apply at any DTI ratio, arguing against simply increasing the DTI ratio threshold.

<sup>20</sup> 85 Fed. Reg. 41716, 41717 (July 10, 2020).

borrower's DTI ratio, the manner in which "debt" and "income" are defined, verified, and processed into a DTI ratio must be clear. The Bureau recognized this and sought to provide a "bright line criterion for a qualified mortgage that . . . provides certainty for creditors to know that a loan satisfies the definition of a qualified mortgage." For the current DTI ratio-based General QM definition, the Bureau adopted Appendix Q, which leveraged existing FHA guidelines to develop standards for satisfying the General QM definition's income and debt verification and DTI ratio calculation requirements.

While Appendix Q arguably established a "bright line criterion," it has not provided compliance certainty. The standards used in Appendix Q were widely understood to be in need of revision at the time of their adoption. The requirements largely reflected manual underwriting processes, while the market's shift to digital documentation and automated underwriting was well underway. In addition, Appendix Q's standards, based on outdated assumptions concerning the nature of income and debt, failed to account for the growth in self-employment, part-time employment, and "gig economy" employment.

Perhaps more problematic was the fact that this misalignment has increased since the ATR/QM Rule was first implemented. In hindsight, this disconnect was foreseeable. To provide the necessary compliance certainty, the standards for determining a consumer's DTI ratio were incorporated directly into the regulatory text. Regulatory standards are, by their nature, static. In contrast, industry standards are dynamic, developed in response to economic, technological, and demographic changes. Thus, over time, Appendix Q and industry standards have grown increasingly disconnected.

The experience with Appendix Q demonstrates a fundamental weakness with any DTI ratio-based QM construct. While bright-line calculation requirements, memorialized in the regulatory text, are necessary to facilitate compliance certainty, those requirements gradually become outdated. While this problem could be solved by updating the regulatory requirements frequently, doing so requires rulemaking, a process that is so time consuming as to be impractical.

#### V. Proposed Eligibility Criteria

As discussed above, the mortgage market has indicated an overwhelming preference for the compliance certainty provided by the safe harbor within the ATR/QM Rule. The knowledge that a loan has both substantial consumer protections and defined legal risk has played a decisive role in shaping underwriting guidelines and dictating which loans most secondary market participants will purchase. It is thus important that changes to the ATR/QM Rule recognize this dynamic and do not undermine the legal certainty afforded by QM status.

The requirements for QM status are generally understood to be bright-line standards that a lender or investor readily can determine have been met. Indeed, one benefit of the GSE Patch

is the ability to evidence clear compliance with the QM requirements through a documented approval from the GSEs' automated underwriting systems. Even Appendix Q—for all its flaws as a sole determinant of eligibility under the General QM definition—attempted to provide clear rules.

Because there are no defined benchmarks for the determination of when a lender has satisfied the general ability to repay standards, the legal analysis to assess whether a lender met the standards is more subjective, turning on an inquiry into the lender's "good faith" and whether the borrower had a "reasonable" ability to repay the loan at consummation. This standard is appropriate as an overarching framework to allow for variations in underwriting practices and innovation that drafters of the rule might not anticipate at the time. The QM standard then narrows the range of acceptable charges, fees, and product features in return for providing a conclusive or rebuttable presumption of compliance with the ability to repay factors. Put another way, a loan that meets the definition of a QM is presumed to reflect a good faith determination that the borrower had a reasonable ability to repay, and any inquiry is limited into whether the loan in fact met the prescriptive and robust QM consumer protections.

The "legal certainty" provided by the ATR/QM Rule can thus be understood as both the ability to adhere to a known universe of underwriting requirements and product features as well as the ability to avoid a subjective evaluation of a lender's "good faith" or the "reasonableness" of its determination. Legal questions of "reasonableness" often require time-consuming litigation, extensive discovery, and possibly a trial. Such litigation creates uncertainty regarding the outcome, which presents risk to the lender. Even if the loan is successfully defended, the defense is expensive.

a. Concerns with Proposed Eligibility Criteria

As discussed throughout these comments, the Bureau's proposed revision to the General QM definition to incorporate an APR-APOR spread is a welcome and appropriate change that should expand access to affordable credit while ensuring strong consumer protections for QM qualification. The rate spread represents a metric that is simple to discern at consummation and, thus, provides the benefits of a "bright line" for QM qualification. The Bureau's decision to require a lender to calculate a DTI ratio in accordance with 12 CFR 1026.43(c)(7), however, is problematic and threatens to undermine the benefits of QM qualification. This outcome is due to the proposed Official Commentary, which states:

"Monthly debt-to-income ratio or monthly residual income. Under § 1026.43(c)(2)(vii), the creditor must consider the consumer's monthly debt-to-income ratio, or the consumer's monthly residual income, in accordance with the requirements in § 1026.43(c)(7). Section 1026.43(c) does not prescribe a specific monthly debt-to-

income ratio with which creditors must comply. **Instead, an appropriate threshold for a consumer's monthly debt-to-income ratio or monthly residual income is for the creditor to determine in making a reasonable and good faith determination of a consumer's ability to repay.**"<sup>21</sup>

This proposed Commentary is identical to the current Official Commentary to the ATR/QM Rule, with the sole revision being the elimination of references to the 43 percent DTI ratio requirement that would be replaced with the proposed APR-APOR spread. This Commentary may have been appropriate under a QM construct featuring a specific DTI ratio threshold, as any other DTI ratio determinations that exceeded that threshold were thus governed by the ATR standard (or qualified through the GSE Patch). The elimination of the General QM definition's DTI ratio threshold and the subsequent proposed inclusion of the 12 CFR 1026.43 (c)(7) DTI ratio calculation methodology and its Commentary introduces an uncertain ATR standard into the bright-line requirements of the QM construct.

Put simply, this Commentary provision might be read to state that any QM loan could be subject to an inquiry into or challenge based on the reasonableness or good faith of the creditor when determining the appropriate DTI ratio of a QM loan. This outcome would substantially impair the benefits of QM status to lenders and investors, introducing significant legal uncertainty into a regime meant to provide clear eligibility parameters. Such a provision in the General QM definition might result in credit-tightening overlays or higher pricing as lenders and investors attempt to quantify the risk. This result is contrary to the Bureau's stated objectives in promulgating the proposed rule.

b. Clarify Eligibility Criteria for the Price-Based QM Construct

As an initial matter, the Bureau could solve this problem by dispensing with the regulatory requirement in the ATR/QM Rule that a lender derive a DTI ratio. To be clear, this does not mean that lenders would not use DTI ratios. This factor is a traditional part of the broader underwriting process and is embedded in much of the pricing that would govern the QM qualification. It is also part of the underwriting guides of investors that purchase loans and thus often would be calculated and included in the loan file to ensure salability.<sup>22</sup> Finally,

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<sup>21</sup> 85 Fed. Reg. 41716, 41774 (July 10, 2020) (emphasis added).

<sup>22</sup> To the extent the concern is that some lenders would not use DTI ratios if they did not ever intend to sell the loan, we note that those lenders would bear the risk of default on their portfolios and thus would have incentives to ensure their underwriting methodology is responsible. The Bureau's recent QM seasoning proposal (85 Fed. Reg. 53568 (August 28, 2020), Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition.) recognizes this logic and the likelihood that portfolio retention can create positive underwriting incentives.

collateral-based lending is restricted by the ATR/QM Rule and would prohibit use of the value of the property as a consideration of the borrower's assets.<sup>23</sup>

Despite these requirements, there may be a theoretical concern that some lenders may originate loans with very high DTI ratios but low LTV ratios on the expectation that the value of the loan could be recouped through foreclosure. This theory ignores some important realities of the mortgage market. First, the cost to foreclose is substantial, with estimates of up to an average loss of \$50,000 to the lender/investor at foreclosure.<sup>24</sup> While the low LTV ratio of the loan could mitigate some of expense at sale, the legally-required outreach to borrowers in delinquency, notice requirements, and other servicing rules or requirements that must be met prior to foreclosure would remain as high fixed costs.<sup>25</sup> These loans still must be priced within the acceptable QM rate spread, fully amortizing, and underwritten with consideration of the monthly payment,<sup>26</sup> while also maintaining fees or points not exceeding 3 percent, making recoupment of costs upfront very unlikely. Next, these loans would not be accepted by most investors, as the government guarantors and insurers maintain DTI ratio limits and the banking regulators generally require consideration of DTI ratios as a component of safe and sound lending. Finally, a business model that is based primarily on lending with the expectation of foreclosure would certainly run a high risk of violating Federal unfair, deceptive, or abusive acts or practices (UDAAP) or state unfair or deceptive acts or practices (UDAP) statutes, as well as Federal and state mortgage servicing rules.

If the Bureau believes it needs to require the explicit calculation of a DTI ratio despite the ATR/QM Rule's requirement that a lender "consider" income, assets, and debt obligations, it should amend the Commentary to make clear that, to qualify a loan for QM status, a lender must evidence that it derived a DTI ratio as part of the underwriting process. Under such a revision, the lender's consideration of a DTI ratio would not be subject to an ambiguous reasonableness or good faith standard. This would avoid undoing the benefits of the proposed rule's design by introducing the ATR standard into the QM construct, while also ensuring that a DTI ratio was produced.

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<sup>23</sup> 12 CFR 1026.43(e)(V)(A).

<sup>24</sup> 2008 Joint Economic Committee of Congress Report, p. 38

([https://www.jec.senate.gov/public/\\_cache/files/3d0074ec-4be8-478b-9b4a-b77efa40be9c/the-2007-joint-economic-report-1810-.pdf](https://www.jec.senate.gov/public/_cache/files/3d0074ec-4be8-478b-9b4a-b77efa40be9c/the-2007-joint-economic-report-1810-.pdf)).

<sup>25</sup> These costs suggest that such a theoretical business model is only likely to be successful if the predatory lender is able to identify homes with high values on resale where the borrower would be willing to assume a low-LTV ratio loan at an unsupportable payment despite being priced near prime, fully amortizing, and with a 3 percent cap on upfront points and fees. While this situation could exist, it is hard to imagine it being sufficiently widespread for this predatory model to be scalable—particularly considering the possible legal consequences discussed above.

<sup>26</sup> See 12 CFR 1026.43(e)(2)(iv).

c. Facilitate Compliance with the Proposed “Consider and Verify” Requirement

The proposed General QM standard would require creditors to consider and verify the consumer’s debt and income. To facilitate compliance with this requirement, the Bureau is considering whether to adopt specific standards for verifying debt and income, as well as whether to provide a safe harbor for lenders that follow approved verification standards.

As previously discussed, compliance certainty is a crucial component of the QM construct. By clarifying acceptable standards and creating a safe harbor for loans that satisfy those standards, the Bureau can promote greater certainty. For this reason, MBA supports both the Bureau’s proposal to sanction specific verification standards as well as the related safe harbor that would accompany them.

Regarding which standards are appropriate, MBA supports the Bureau’s proposal to approve standards used by Fannie Mae, Freddie Mac, FHA, the Rural Housing Service (RHS), and the Department of Veterans Affairs (VA). These standards are well-established and well-understood by industry, which should minimize the implementation burden and facilitate compliance. The Bureau also proposes to allow verification, along with a presumption of compliance via the safe harbor, using “guidelines that have been revised but are substantially similar” to the guides specifically approved (*e.g.*, GSE, FHA, RHS, VA, etc.).<sup>27</sup> While it is important to allow verification using updated or otherwise revised versions of approved guidelines, the requirement that these versions be “substantially similar” may be contrary to the Bureau’s goal of providing a clear safe harbor. A requirement that versions be “substantially similar” introduces a degree of uncertainty that undermines the compliance certainty that Bureau-approved standards are meant to provide. Revised underwriting guides and handbooks, moreover, are approved by Federal agencies—the Federal Housing Finance Agency (FHFA), the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA), VA, etc.—that vet any revisions to ensure they are consistent with prudent underwriting practices. For these reasons, revised verification standards should be presumed to be acceptable unless the Bureau affirmatively determines otherwise.

Along with widely accepted government and GSE verification standards, the proposed rule should be enhanced to allow income and debt verification using standards created by external stakeholders, provided those standards are approved by the Bureau. Allowing stakeholder-developed standards is critical to promoting innovation and would, thus, further

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<sup>27</sup> While the use of the GSE, FHA, RHS, and VA standards for verifying debt and income will work well for many lenders in the first-lien market, it is critical that the Bureau provide additional mechanisms for lender compliance in the subordinate-lien market. The GSE and agency standards would not support the subordinate-lien market, but it is just as important that lenders in this market obtain compliance certainty with respect to the “consider and verify” requirements. Such compliance certainty would come from bright-line standards, approved by the Bureau, that could serve as alternatives to the GSE and agency options.

the Bureau's statutory objective to support innovation in the mortgage market.<sup>28</sup> To best ensure the benefits of such a provision are realized, the Bureau should establish a transparent process, with clear evaluation criteria, through which stakeholder-developed verification standards will be assessed for suitability. Finally, while we appreciate the safe harbor for agency or other designated standards, we ask the Bureau to reiterate in clear terms that a creditor's adoption and adherence to prudent verification standards also complies with QM, even if the standards do not mirror the agency or designated guidelines.

#### VI. QM Safe Harbor Boundaries

Within the QM segment of the market, the most important determination for lenders, investors, and other market participants is whether loans maintain a conclusive presumption or a rebuttable presumption of ATR compliance. At the onset of the QM framework and the implementation of the ATR/QM Rule, the practical distinction between safe harbor and rebuttable presumption QMs was not yet observable. When the ATR/QM Rule was finalized, the Bureau noted its expectation that the litigation risk associated with rebuttable presumption QMs "likely would be quite modest and would have a limited impact on access to credit."<sup>29</sup>

While the Bureau's expectation was not unreasonable at the time, the market preference for safe harbor QMs has been demonstrated clearly over the past six years. Creditors frequently cite the importance of the legal certainty provided by safe harbor QM status, and many do not offer rebuttable presumption QMs at all. In 2018, for example, approximately 95 percent of conventional QM loans were originated as safe harbor QMs.<sup>30</sup> In short, the rebuttable presumption QM category has not worked well in practice in the first-lien market.

Given that the safe harbor QM threshold effectively will dictate the terms of the aggregate QM market, it is critical that the Bureau set this threshold in a manner that does not restrict access to credit unnecessarily or trigger undesirable market shifts. Important reforms to the existing QM construct are needed to mitigate these concerns.

##### a. Differences in the Conventional and FHA Safe Harbor Thresholds

The flaws in the existing QM construct are due to the differing ways in which the safe harbor threshold is set in the General QM definition and in the QM definition maintained by FHA. Because the General QM definition does not exclude any components of the loan's price from

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<sup>28</sup> 12 U.S.C. § 5511(b)(5) (among the Bureau's objectives is to ensure that "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation").

<sup>29</sup> 85 Fed. Reg. 41716, 41720 (July 10, 2020).

<sup>30</sup> 85 Fed. Reg. 41716, 41735-41736 (July 10, 2020) (the Bureau notes that, in 2018, 90.6 percent of conventional loans were safe harbor QMs and 95.8 percent of conventional loans were QMs;  $90.6/95.8 = 94.6$  percent share of conventional QM market originated as safe harbor QMs).

the calculation of the safe harbor threshold, changes to each of these components will impact whether the rate spread falls below the threshold. The presence of mortgage insurance (MI) on loans with higher LTV ratios and the imposition of loan-level price adjustments (LLPAs) or delivery fees by the GSEs, for example, increase a loan's APR and may push the rate spread above the safe harbor threshold.

The FHA QM definition, however, specifically excludes a loan's annual mortgage insurance premium (MIP) from the determination of that loan's safe harbor status. It does so by setting the safe harbor threshold at a rate spread of 115 basis points plus the annual MIP.

Fluctuations in the annual MIP therefore cannot push the rate spread above the safe harbor threshold; as the annual MIP rises, so too does the safe harbor threshold. Further, most FHA-insured loans feature an annual MIP of 85 basis points, which effectively sets the safe harbor threshold for these loans at a rate spread of 200 basis points.

These features of the safe harbor thresholds in the general QM definition and the FHA QM definition increase the likelihood that some borrowers would be eligible for safe harbor FHA-insured QM loans but only rebuttable presumption conventional QM loans. This outcome is more likely for conventional loans for which private MI or GSE LLPAs or delivery fees increase the rate spread above 150 basis points—namely, for borrowers with lower down payments and lower credit scores. In these situations, many creditors would opt to offer a safe harbor FHA-insured QM loan rather than a rebuttable presumption conventional QM loan.

These dynamics shift more borrowers to the FHA market, where their cost of credit may be higher. The borrowers more likely to be limited to FHA-insured loans disproportionately come from underserved populations, such as lower-income households or communities of color. A QM construct that inflates the FHA market share while producing fewer affordable mortgage credit options for underserved borrowers is not an acceptable result.

#### b. Adopt Appropriate Safe Harbor Boundaries

To best achieve the Bureau's stated objective of balancing "the competing consumer protection and access to credit considerations"<sup>31</sup> associated with the QM construct, MBA recommends that the Bureau increase the safe harbor threshold for first-lien transactions in the General QM definition to a rate spread of 200 basis points. In doing so, the Bureau should eliminate the rebuttable presumption QM category for first-lien transactions altogether.

This increase in the safe harbor threshold will mitigate many of the concerns described above with respect to the dynamics between the FHA and conventional markets. Lenders no longer would feel compelled to limit borrowers to FHA offerings if the rate spread on conventional

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<sup>31</sup> 85 Fed. Reg. 41716, 41740 (July 10, 2020).

loans for which they qualify falls in the over 150 to 200 basis point range. Many lower-income or other underserved borrowers would experience enhanced options for affordable credit.

Any increase in the safe harbor threshold must be undertaken in a manner that does not afford a conclusive presumption of ATR compliance to loans that do not warrant this presumption. The shift to a safe harbor threshold of 200 basis points does not trigger this concern. Recent loan performance data, for example, reveal only a modest increase in early delinquency rates in the population of loans with rate spreads between 150 and 200 basis points relative to loans with rate spreads just below 150 basis points.

Finally, the Bureau appropriately recognizes the need for higher safe harbor thresholds for subordinate-lien transactions and transactions with smaller loan amounts. Many subordinate liens, in particular, feature higher rate spreads due to the nature of these loans, even in the absence of indicia warranting higher pricing. As such, many subordinate liens obtain rebuttable presumption QM status under the existing QM construct because they maintain DTI ratios below 43 percent. Under the new QM parameters, however, this higher pricing may push many subordinate liens into non-QM status, given the new (lower) rate spread cap for QM status. The Bureau should examine this market further to determine whether loans with relatively low early delinquency rates are inappropriately losing QM status under the proposed rule.

#### VII. Standard for Adjustable-Rate Mortgages

The proposed rule includes a special rule for determining the APR for adjustable-rate mortgages (ARMs) that feature an interest rate reset within the first five years of the loan (as measured from the due date of the first periodic payment). Under this special rule, creditors would be required to calculate the APR for these ARMs by assuming that the maximum interest rate possible in the first five years of the loan remains the interest rate for the full term of the loan. This methodology represents a significant departure from the existing method for calculating APR for purposes of determining QM status, under which creditors are required to use a composite of the maximum possible interest rate in the first five years of the loan and the fully indexed rate at loan consummation.

The Bureau expresses concerns regarding the use of the existing APR calculation for these ARMs in concert with the removal of the DTI ratio threshold from the General QM definition. While it is appropriate for the Bureau to re-examine consumers' ability to repay these loans in the context of a new, price-based QM construct, the justification for the special rule provided by the Bureau likely overstates the role of the DTI ratio threshold as a consumer safeguard. Further, the loan performance data provided by the Bureau in the proposed rule indicate that a pricing threshold combined with the continued existence of critical product restrictions should serve as strong safeguards.

a. The Concerns Regarding ARMs are Overstated

As noted by the Bureau, ARMs with initial fixed-rate periods of five or fewer years showed substantially higher early delinquency rates than other types of loans in the 2002-2008 period. The Bureau further notes, however, that most of this differential performance is attributable to ARMs with higher prices (thereby eliminating them from QM consideration under the proposed rule) or product features that are prohibited for QM loans. After controlling for these factors, the difference in early delinquency rates between these ARMs and other loan types is quite small. The pricing and product safeguards in the proposed rule also are likely, according to the Bureau, to exclude many of what it deems the “riskiest” ARMs from obtaining QM status. Together, these determinations indicate that the pricing threshold in the proposed rule, along with the existing (and continued) product feature limitations, will distinguish appropriately between ARMs that warrant a presumption of ATR compliance and those that do not – without the need for the proposed special rule.

In its discussion of the risks associated with certain ARMs, the Bureau focuses on the removal of the DTI ratio threshold from the General QM definition, a threshold that, it argues, acted as a governor on the eligibility of ARMs for QM status. In this discussion, however, the Bureau does not acknowledge that the QM construct in the proposed rule requires creditors to consider a consumer’s monthly debt and income (or residual income) in order to obtain QM status for the loan. In doing so, creditors must take into account the maximum interest rate possible in the first five years of the loan when evaluating monthly payments for mortgage-related obligations. As such, creditors will continue to assess consumer debt obligations that incorporate assumptions regarding future interest rate increases and consider this information when underwriting potential borrowers. The removal of the DTI ratio threshold from the General QM definition does not remove consideration of income and debt from creditors’ processes—an important design feature of the proposed rule.

The Bureau further discusses the potential for what it deems “risky” loans to be eligible for QM status, though it does not discuss the opposite consideration with respect to the special rule—the volume of loans that *do* warrant a presumption of ATR compliance that would be inappropriately denied QM status. The requirement to assume the maximum interest rate in the first five years of the loan for the full term of the loan would increase the reported APR substantially and, for the majority of these ARMs, effectively would prevent them from obtaining QM status.

The large increase in APRs calculated under the special rule would, in most cases, push these ARMs outside the acceptable rate spread proposed by the Bureau. As such, the special rule functionally serves as a QM prohibition on ARMs with interest rate resets in the first five years of the loan. This outcome is misaligned with the statutory basis for the ATR/QM Rule and the stated intent of the Bureau. Indeed, the Bureau notes in the proposed rule that it “...believes

the risks associated with short-reset ARMs can be effectively managed without prohibiting them from receiving General QM status, given that the Dodd-Frank Act explicitly permits short-reset ARMs to be considered as General QMs...<sup>32</sup> By substantially raising the APRs used in the rate spread calculation for these ARMs, the special rule would disqualify many of them from QM eligibility. The special rule thus would act functionally as a product feature limitation.

The inability of these ARMs to achieve QM status also contradicts much of the work that has been completed by the Bureau, other regulators, the GSEs, and market participants to facilitate the development of new ARMs indexed to the Secured Overnight Financing Rate (SOFR). This process, necessitated by the likely discontinuation or unavailability of LIBOR in the near future, has consumed tremendous resources from many stakeholders to promote a smooth transition for the ARM market. If ARMs with interest rate resets in the first five years of the loan effectively are deemed non-QM loans, the market for these loans is likely to shrink and become far less liquid. The GSEs, for example, would not be permitted to purchase these loans, thereby voiding some of the new SOFR-based ARM products they have developed and recently introduced. More broadly, the collective public- and private-sector efforts to transition the ARM market from LIBOR to SOFR or other indices demonstrates the importance of this market and the desire for ample liquidity and widespread availability of these loans for consumers. The impact of the special rule instead will negate much of this work and produce a far less robust ARM market and limit consumer choice unnecessarily.

b. Remove or Amend the Special Rule for ARMs

To better ensure a robust ARM market and preserve the QM eligibility of well-underwritten ARMs, the Bureau should maintain its existing APR calculation rather than adopt the special rule. The existing calculation has served consumers well since the adoption of the ATR/QM Rule. As the Bureau notes, the presence of the pricing threshold, as well as the continuation of the current product feature limitations, will ensure that ARMs more likely to enter into early delinquency will not achieve QM status. Further, the continued consideration of debt and income (or residual income) by creditors will serve as yet another safeguard for consumers.

If the Bureau does move forward with some version of the special rule, it should, at a minimum, reduce its impact by limiting the affected population of ARMs. One approach would be to set the QM rate spread threshold for ARMs in a manner that does not require calculation of the APR, but instead references the maximum interest rate possible in the first five years. The QM standard for these ARMs could, for example, require that the maximum interest rate possible in the first five years be within a given rate spread of APOR. This

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<sup>32</sup> 85 Fed. Reg. 41716, 41764 (July 10, 2020).

approach would reduce the reliance on APR calculations and ensure that consumers are not subjected to interest rate resets that could harm their ability to repay.

Another way the Bureau could reduce the market impact of the special rule is to limit it to those loans with interest rate resets within the first three years. Given the Bureau's concerns about early payment shocks for consumers, it would be more sensible to focus on ARMs with the earliest interest rate resets rather than applying the special rule to ARMs with initial fixed-rate periods of five years. This adjustment would retain the potential for QM eligibility for ARMs that feature very reasonable initial fixed-rate periods and that are offered widely throughout the market.

#### VIII. Implementation Timeline

The Bureau proposes to make the revised General QM definition effective six months following publication of a final rule. Similarly, the Bureau is proposing to extend the availability of the GSE Patch such that it will sunset on the effective date of the revised General QM definition. As the Bureau has noted, it is critical that the transition to a new QM construct not cause disruption in the market, as any "gap" in the ability of many consumers to obtain QM loans would severely impede access to credit.

##### a. Clarify the Definition of "Application Date"

The effective date provided in the proposed rule would implement the revised General QM definition for loans for which creditors receive applications on or after that date. The use of application dates rather than loan consummation dates is reasonable, as creditors typically cannot know with certainty when a loan will close at the time they begin the underwriting process. As MBA noted in prior comments on the sunset of the GSE Patch, however, the Bureau should ensure that "loan application" is clearly defined so as to minimize confusion in the market. Rather than developing new definitions of "loan application" or requiring creditors to create new processes or change systems, the Bureau should use the definition found in the TILA-RESPA Integrated Disclosure (TRID) Rule. This information is recorded and maintained by creditors, and its use would result in a more consistent understanding among market participants.

##### b. Ensure QM Coverage Throughout the Transition Period

In order to achieve its objective of ensuring no gap between the sunset of the GSE Patch and the use of the revised General QM definition, the Bureau should further amend the proposed implementation timeline. Under the current proposals, a gap would occur due to the interaction between:

- 1) the provision applying the GSE Patch to loans “*consummated* on or before the earlier of either” the GSEs exiting conservatorship or “[t]he effective date of a final rule issued by the Bureau amending [the General QM loan definition];” and
- 2) the provision applying the new QM parameters to loans “for which creditors *receive an application* on or after this effective date[.]”

These provisions would cause a gap in coverage for many borrowers who apply for loans prior to the effective date but close on these loans after the effective date. In this scenario, the loans of these borrowers would be ineligible to qualify for QM status based on the GSE Patch (their loans would not be consummated until after its sunset) or the new QM parameters (the loan application dates would be earlier than the implementation of the new parameters). Borrowers who seek conventional mortgage credit and fall into this gap will be subject to the existing General QM definition. As has been discussed extensively, borrowers with DTI ratios above 43 percent or income sources difficult to qualify through Appendix Q will be unable to obtain conventional QM loans. Instead, they will be limited to potentially higher-cost options, such as non-QM loans, or they may be unable to obtain mortgage credit at all.

While the Bureau could address this gap in QM coverage by instituting the new QM parameters for loans consummated after the effective date (rather than applications taken on or after the effective date), this timeline would present significant risks to the market. As noted earlier, creditors cannot be certain of the exact loan consummation date in the early stages of underwriting. In the period prior to the effective date, creditors therefore would be more cautious and likely approve only those borrowers whose loans would qualify for QM status under both the GSE Patch *and* the new QM parameters.

A less disruptive solution would be to allow a period of “overlap” between the GSE Patch and the new QM parameters—essentially, a period in which creditors could use either construct to obtain QM status for loans they originate. To implement this solution, the Bureau should maintain the effective date of the new QM parameters as proposed, but also extend the GSE Patch for an additional six months (such that it sunsets six months after the effective date of the new QM parameters). A six-month overlap would provide the greatest certainty that no loans would fall into a gap that denies them QM status. This overlap is of particular importance for loans on newly constructed homes, which typically feature a much longer period of time between loan application and loan closing (for both construction-to-permanent loans and purchase loans on new homes).

This period of overlap also would provide flexibility to creditors as they adjust and transition to the new QM parameters. There likely will be a wide range among creditors in terms of the time needed to bring processes and systems into compliance, based on several factors including their business model, the types of technology and operating systems they employ,

and the quantity and types of third-party service providers on which they rely. For some creditors, a six-month implementation window will be sufficient; for others, this timeline will present challenges. Further, there is a strong likelihood that creditors will be implementing the new QM construct at the same time they are implementing the final stages of the transition to the redesigned Uniform Residential Loan Application—itsself a significant undertaking. Under a timeline that allows for a period of overlap between the two QM constructs, those creditors that are able to transition quickly can begin processing loans under the new General QM definition upon its effective date, while those that cannot or do not wish to do so are provided greater flexibility during the transition.

c. Address Uncertainty Over the Effect of GSEs Exiting Conservatorship

Finally, as MBA noted in prior comments to the Bureau, the continued use of the GSEs exiting conservatorship as one of the triggers for the sunset of the GSE Patch injects unnecessary uncertainty into the market and the effort to transition smoothly to a new QM construct. It is unclear when one or both of the GSEs will exit conservatorship, as these are events outside the control of the Bureau or creditors. If the GSEs were to exit conservatorship prior to the “organic” sunset of the GSE Patch, the result would be a gap in QM coverage before the transition could be completed—exactly the outcome the Bureau appropriately is seeking to avoid. Given that the GSE Patch will sunset in the near future (under MBA’s proposed recommendations, six months after the final rule’s effective date), there is little concern regarding the existence of the GSE Patch for a prolonged period while the GSEs are no longer in conservatorship. To eliminate any potential for market disruption, the Bureau should eliminate the GSEs’ potential exit from conservatorship as a trigger for the sunset of the GSE Patch. Absent this important revision, the Bureau should, at a minimum, provide greater clarity regarding how the final QM parameters resulting from this rulemaking would operate if either or both GSEs exit conservatorship before the Patch sunsets.

d. Extend the Cure for Points and Fees Violations

As a final note, the QM cure for points and fees violations expires at the same time as the GSE Patch in January 2021. While this cure is not heavily utilized, it does provide a valuable potential avenue for lenders to remedy particular types of errors in calculating points and fees. It also helps ensure that consumers receive timely restitution in the rare situations when relevant mistakes are made or miscalculations happen. We urge the Bureau to consider making this cure permanent or extending it to allow lenders to be able to utilize this mechanism when appropriate.

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MBA appreciates the Bureau's thorough and considered approach to revising the QM framework. The shift to a price-based construct, along with the elimination of a stand-alone DTI ratio threshold and associated Appendix Q, will facilitate a more vibrant market in which consumers maintain strong access to credit as well as appropriate safeguards to ensure their ability to repay. We look forward to our continued engagement with the Bureau as the new QM framework is finalized and implemented.

Sincerely,

A handwritten signature in black ink, appearing to read "R. D. Broeksmit", with a stylized flourish at the end.

Robert D. Broeksmit, CMB  
President and Chief Executive Officer  
Mortgage Bankers Association