Ability-to-Repay / Qualified Mortgage Improvements

The Consumer Financial Protection Bureau's (CFPB's) Ability-to-Repay (ATR) rule and Qualified Mortgage (QM) standard must be improved to ensure more creditworthy borrowers can access safe and sustainable credit on better terms. MBA believes QM fixes should be made holistically, applying to all market participants regardless of charter type or business model.

OVERVIEW

- The ATR rule requires lenders to determine that a borrower has a reasonable ability to repay a mortgage before the loan is consummated. The Dodd-Frank Act and this rule establish significant penalties and liability for failing to meet the requirements.
- The ATR rule provides a presumption of compliance for loans that are originated as QMs.
- In order for a mortgage loan to qualify as a QM, it may not contain certain "risky" features—such as interest only or negative amortization terms—and it must meet specified underwriting standards.
- These standards also include a debt-to-income (DTI) ratio cap of 43 percent, or in the alternative, eligibility for Fannie Mae and Freddie Mac (the GSEs), the Federal Housing Administration (FHA), or other government programs (i.e., the so-called "QM patch").
- Borrowers also may not be charged points and fees that exceed 3 percent of the loan amount for loans greater than or equal to $107,747 (in 2019). Loans below that amount are permitted to have fees in excess of 3 percent, based on a sliding scale.
- The rule establishes a compliance *safe harbor* for QMs if the annual percentage rate (APR) of the loan does not exceed the average prime offer rate (APOR) for that loan by 150 basis points or more. Loans with an APR that exceeds the APOR by more than 150 basis points receive a *rebuttable presumption* of compliance if the loans otherwise qualify as QMs.

IMPACT

- Considering the significant potential liability and litigation expenses for an ATR violation, many lenders have limited themselves to making only QM safe harbor loans. Those that do offer non-QM loans often charge higher rates in order to offset potential legal and compliance risks, even if the underlying credit risk is relatively low. As a result, some creditworthy borrowers who should qualify for a QM have trouble gaining access to safe, sustainable and affordable mortgage credit.

MBA'S POSITION / NEXT STEPS

- MBA is continuing to work with policymakers—including the CFPB—to improve the ATR rule holistically. MBA regards this area as a key priority and has commented to the CFPB during its Dodd-Frank Act-required "look back" analysis of the ATR rule, which it completed earlier this year.
- Many recent efforts to adjust the rule, as well as several proposals in Congress, have focused on narrow QM fixes that work only for certain markets, charter types or business models (e.g., rural markets, community banks and portfolio lenders). Unfortunately, this approach helps only a narrow segment of the borrowing public. While MBA appreciates these efforts to address flaws in the QM standard, more effective changes to the ATR rule would not be confined to particular types of markets, institutions, or business models. The QM definition should be fixed holistically—not revised in a piecemeal fashion with special exceptions for narrow categories of lenders.
- MBA supports S. 540, the *Self-Employed Mortgage Access Act*, as re-introduced on a bipartisan basis by Senators Mark Warner (D-VA) and Mike Rounds (R-SD). The bill attempts to address the challenges of documenting the ability to repay for borrowers with non-traditional forms of income. The legislation, which embodies ideas made by MBA to the CFPB, would allow the use of existing underwriting standards such as those found in the Fannie Mae and Freddie Mac Seller/Servicer Guides or the FHA, VA, and USDA Handbooks as alternatives to Appendix Q. These existing standards could be used to satisfy the requirements needed for a loan to achieve Qualified Mortgage status. A House companion has not yet been introduced.
- MBA has also made a number of key additional recommendations for refining the QM definition:
  - **Expand the Safe Harbor:** All loans satisfying QM requirements should be treated as safe harbor loans (e.g., the rebuttable presumption line at APOR + 150 basis points should be eliminated). At a minimum, the QM safe harbor threshold should be increased to 200 basis points over APOR.
  - **Increase the Small Loan Definition:** The current definition of a smaller loan under the ATR rule—where points and fees may exceed 3 percent and still qualify as a QM—is set at $107,747 for 2019. This threshold is too low given that the average loan size is approximately $260,000. As a consequence, too many smaller loans do not qualify as QMs. The loan size threshold for the 3 percent points and fees cap should be increased to $200,000, with a sliding scale that permits progressively higher points and fees for smaller loans. This change would increase QM lending to moderate-income borrowers who have smaller loan balances.
  - **Broaden the Right to Cure for DTI and Other Technical Errors:** MBA has led in advocating for a regulatory change to permit the cure or correction of errors where the 3 percent points and fees cap is exceeded. To encourage lending to

the full extent of the QM credit box, MBA also urges that the right to cure or correct errors be extended to DTI miscalculations and other technical errors.

- **Revise the Points and Fees Definition:** The QM points and fees calculation includes fees paid to lender-affiliated settlement service providers, but not to unaffiliated settlement service providers. MBA believes fees paid to affiliates should also be excluded from the points and fees calculation. This approach would result in greater competition between providers and benefit consumers. MBA supports legislative proposals that would exclude title insurance fees paid to lender-affiliated companies from the calculation of points and fees under QM. MBA also supports equal treatment of retail and wholesale loan officer compensation in the fees and points calculation.
- **Fix "Appendix Q":** The ATR rule contains complex and inflexible guidance in Appendix Q as to how lenders are to document and verify borrower income and assets. This construct has made it difficult for lenders to originate loans above a 43 percent DTI ratio if the loans are not eligible to be sold to the GSEs or insured or guaranteed by a government agency. The Appendix Q methodology is outdated and not as useful as alternative standards, such as the GSE, FHA, Veterans Administration (VA) and Rural Housing Service (RHS) underwriting standards for determining a consumer's DTI ratio. MBA fully supports recent efforts, such as legislation introduced in the Senate in 2018 (S. 3401, led by Sens. Mark Warner (D-VA) and Mike Rounds (R-SD)), that would direct CFPB to explicitly permit other government-approved standards to be used as alternatives to those found in Appendix Q.
- **Replace the GSE QM Patch and the Default QM:** While the GSE QM patch is essential at this time, it expires on the date the GSEs exit conservatorship or January 10, 2021 (whichever is earlier). MBA urges the CFPB to begin work now to consider other transparent sets of criteria, including compensating factors, to define a QM—replacing both the GSE QM patch and the 43 percent DTI ratio threshold. For example, residual income (used for VA loans) could be considered as an alternative to a DTI ratio threshold, or as a compensating factor for higher DTI ratios. Such a standard must provide workable, flexible underwriting standards that are consistent with the Dodd-Frank Act without injecting undue complexity or uncertainty into the process of serving consumers' credit needs. Pending the development of a substitute or substitutes, the GSE QM patch remains essential.