

September 9, 2019

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

Re: Response to ANPR on the Qualified Mortgage Definition (RIN 3170-AA98)

Dear Director Kraninger:

Thank you for the opportunity to respond to the Advance Notice of Proposed Rulemaking (ANPR) on the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z). We, the undersigned entities, represent a broad coalition of the nation's largest mortgage lenders,<sup>i</sup> consumer advocacy and civil rights organizations, and leading industry trade associations. Together, we work tirelessly to expand access to homeownership for millions of people in communities across the United States in a safe, sustainable, and transparent way.

We appreciate the efforts of the Consumer Financial Protection Bureau (CFPB or Bureau) to solicit our independent views regarding the Ability to Repay / Qualified Mortgage (ATR-QM) rule and the impact of the expiration of the Government-Sponsored Enterprise (GSE) Patch on market participants. Our companies, organizations, and members held a series of collaborative discussions with the goal of finding broad consensus around key components of the regulation to inform Bureau deliberations on a new definition for QM. We write to articulate these points of consensus and to encourage the Bureau to consider our position as it establishes the future regulatory framework governing QM. Many of the organizations participating in this coalition will also submit separate letters to present their unique perspectives for balancing risk, healthy market competition, and broad access to sustainable credit within the context of the regulatory framework.

### ***Consensus Position***

We propose the following for the ATR-QM rule, to coincide with the expiration of the GSE Patch, to preserve access to sustainable loans for creditworthy borrowers and avoid market disruption:

1. Eliminate from the general QM category the debt-to-income (DTI) ratio requirement and the associated Appendix Q;<sup>1</sup>
2. Maintain and enhance the existing ATR regulatory language; and
3. Maintain the existing QM statutory safe product restrictions that prohibit certain risky loan features (e.g., no terms over 30 years, no negative amortization, no interest-only payments, no balloon payments, documented and verified income, etc.) and clarify provisions related to documentation and verification of income.

The GSE Patch has provided an alternative to the DTI ratio threshold, as well as relief from the rigid requirements for verifying and calculating income, assets, and debts for DTI ratios under Appendix Q for non-W-2 wage earners.<sup>ii</sup> The GSE Patch has facilitated access to

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<sup>1</sup> Some signatories recommend that CFPB retain the DTI ratio measure, with improved standards for calculating the DTI ratio, for QM loans that are not "prime or near-prime" loans – those with a rate spread of 250/300 basis points over the Average Prime Offer Rate (APOR) or more, which carry greater risks to borrowers; see <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-a-smarter-qualified-mortgage-july2019.pdf>. None of the signatories to this letter oppose this proposal.

homeownership for approximately 3.3 million creditworthy borrowers who collectively represent nearly 20 percent of the loans guaranteed by the GSEs over the last 5 years.<sup>iii</sup> Moreover, analysts estimate that roughly \$260 billion (within a range of \$200-320 billion) of 2018 total mortgage loan origination volume met the QM definition under the GSE Patch.<sup>iv</sup> But lending outside of the Patch and the Federal Housing Administration channel has been limited largely because of the difficulty of complying with QM's hard DTI cap and the related requirements of Appendix Q, while the Patch has provided the regulatory certainty that was far more attractive to lenders. After the Patch expires, the best way to enable fair market competition across all lending channels while also ensuring that these creditworthy individuals can be served in a safe and sound manner under the existing ATR-QM framework is to eliminate the DTI ratio for prime and near-prime loans<sup>v</sup> and with it Appendix Q.

### ***Credit Risk Safeguards and Consumer Protections***

The CFPB designed the original ATR-QM rule with three core components that mutually reinforce the statutory mandate for creditors to lend to consumers safely: i) ATR requires comprehensive underwriting; ii) QM establishes a set of product restrictions that reinforce the law's safeguards that consumers have the ability to repay their loans; and iii) Safe Harbor protections create an incentive for mortgage creditors to produce ATR-compliant, QM loans. These three regulatory levers collectively encourage creditors to serve customers through fully-underwritten, safe, and affordable mortgages. Because of this layered regulatory framework, the proposal described above would enable continued access to credit without introducing additional credit risk to the marketplace or disrupting access to credit.

Today, all mortgage loans must be underwritten in accordance with the ATR statute. This requirement should continue to be the bedrock of compliance, and nothing we are proposing would change that reality.<sup>vi</sup> We believe that consumers and creditors alike would also benefit from further clear guidance in the future on the ATR statutory underwriting requirements, including that creditor underwriting practices aimed at "equity stripping" and collateral-based lending is expressly prohibited.

The Safe Harbor measure reinforces the underwriting mandate by assuring that only loans priced as low-credit-risk transactions receive the strongest protections from legal liability. The Bureau's own assessment of the ATR-QM rule indicated the influence of this feature on creditors' lending activities. The coalition commends the CFPB for crafting this regulatory framework, which created not only a solid foundation for sound underwriting, but also a compelling incentive for creditors to originate QM loans.

### ***Access to Credit***

The Bureau has a unique opportunity to modify the ATR-QM rule to meet the needs of a changing housing market. Elimination of the DTI requirement for prime and near-prime loans<sup>vii</sup> would preserve access to sustainable credit for the new generation of first-time homebuyers in a safe and sustainable way and in accordance with the fundamental ATR requirements. This change is especially important for reaching historically underserved borrowers, including low- to moderate-income households, and communities of color. Household formation growth is being largely driven by communities of color throughout the nation. According to projections by the Urban Institute, in 2030 10.4 million new households will be people of color. Of these total new households, 46 percent are projected to be Hispanic, 18 percent are Black, 24 percent are other races, and only 12 percent are projected to be non-Hispanic white. If we look instead at just homeowners, Hispanics, for example, are projected to account for 56 percent of all new

homeowners between 2020 and 2030.<sup>viii</sup> Communities of color are more likely to have lower incomes, live in multi-generational households, have thin to no traditional credit history, be self-employed and participate in the gig-economy. If the mortgage market fails to support those potential new homeowners along their home buying journey, the nation will bear the economic consequences.

By retaining the most effective aspects of the ATR-QM rule, including the core underwriting and documentation/verification requirements of ATR and the QM product feature restrictions, we believe the Bureau can act to counter the effects of systemic headwinds that face both first-time and repeat homebuyers and facilitate the responsible and steady emergence of this new generation into homeownership.

### ***Marketplace Innovation***

We believe that our proposal will also help increase competition across the marketplace, reduce systemic risk, and expand the participation of private insurers and investors with strong interest in innovative approaches to creditor decisioning that will drive enhanced, yet prudent underwriting to occur outside of the conforming conventional market.

The Bureau's five-year lookback assessment of the ATR-QM rule highlights the market impact and distortions created by the GSE Patch, which provides an exemption from the DTI limit and Appendix Q only for loans that meet the underwriting requirements of the GSEs.<sup>ix</sup> The Bureau's analysis shows that the GSEs maintained a consistently higher share of the market, while growth in QM loans issued as private-label securities and non-QM loans remains small. Notably, the lookback assessment indicates that the rule displaced between 63 and 70 percent of approved applications for home purchase among high-DTI borrowers seeking loans not eligible for GSE purchase from 2014-2016, despite this segment of borrowers often demonstrating greater levels of creditworthiness.<sup>x</sup>

The Bureau also noted that part of the GSE market share can be attributed to automated, dynamic underwriting standards.<sup>xi</sup> By contrast, subjecting most of the mortgage market to the rigid language of Appendix Q would cause significant market disruption and delay to consumers nationwide by stifling innovations that have improved accuracy and predictability in the mortgage loan process.

Further, a DTI ratio is not intended to be a stand-alone measure of credit risk and, on its own, is widely recognized as a weak predictor of default and one's ability to repay. DTI ratios must be considered within the context of a full set of risk factors used to underwrite the loan. These risk factors are weighed and balanced against one another to provide the creditor with a comprehensive view of the borrower's financial profile.

Under the coalition proposal, private capital providers, mortgage insurers, and lenders will have the opportunity to develop better risk analytics and models, in accordance with fair lending laws, than are possible under the constraints of the GSE Patch or Appendix Q, so long as those underwriting criteria fully satisfy ATR and QM requirements. In other words, the removal of the DTI requirement for prime and near-prime mortgages<sup>xii</sup> provides the marketplace with the prospect of new ways to meet consumer demand using sound, ATR-compliant underwriting and safe QM products to ensure satisfaction of the fundamental statutory and regulatory requirements.

### ***Conclusion***

In sum, the coalition advocates that the Bureau should retain among the requirements of QM the explicit Safe Harbor and product features but remove the DTI requirement for prime and near prime loans when the GSE Patch expires. We are not advocating for a pricing or rate

spread indicator to serve as a substitute for a DTI ratio in the QM definition; rather we are arguing that the application of a DTI ratio threshold and Appendix Q for prime and near prime loans<sup>xiii</sup> is unwarranted. The Dodd-Frank Act ATR obligation requires that creditors underwrite the loan to determine the borrower’s ability to repay, a requirement that the CFPB can supervise and enforce to deter irresponsible lending practices.

We believe the consensus ideas that our broad coalition has outlined can help the Bureau craft a forward-thinking QM definition that embraces the technological advances and innovation in the mortgage finance industry. These considerations would also recognize the rapidly transforming nature of our increasingly diverse economy and would help a new generation achieve homeownership. We strongly urge the Bureau to continue its engagement with all relevant stakeholders, including industry, civil rights, and consumer groups. We look forward to continuing to work with the Bureau as the Administration and Congress consider important reforms to our nation’s housing finance system.

Sincerely:



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- <sup>i</sup> Lenders are referred to herein as “creditors” to align with definitions under TILA.
- <sup>ii</sup> Non-W-2 wage earners are defined as borrowers whose employment type is self-employed, seasonal, multiple part-time / “gig economy,” multigenerational household income, or retirees.
- <sup>iii</sup> Goodman, Laurie, “New Data Confirm the Urgency of Addressing the Expiration of the GSE Patch,” Urban Institute, March 25, 2019, <https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch>.
- <sup>iv</sup> Carroll, Pete, “Expiration of the CFPB’s Qualified Mortgage ‘GSE Patch’ – Part 1: GSE Patch accounted for an estimated \$260 billion, or 16%, of 2018 home loan originations,” CoreLogic, July 11, 2019, <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-1.aspx>.
- <sup>v</sup> See footnote 1.
- <sup>vi</sup> CFPB, 2019, “Ability-to-Repay and Qualified Mortgage Rule Assessment Report,” [https://files.consumerfinance.gov/f/documents/cfpb\\_ability-to-repay-qualified-mortgage\\_assessment-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf) pages 36-37.
- <sup>vii</sup> See footnote 1.
- <sup>viii</sup> Goodman, Laurie, “New Data Confirm the Urgency of Addressing the Expiration of the GSE Patch,” Urban Institute, March 25, 2019, <https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch>.
- Pradhan, Archana, “Expiration of the CFPB’s Qualified Mortgage ‘GSE Patch’ – Part 2: Younger millennials and retirees, Non-W-2 earners, and low-income borrowers more frequent in the ‘GSE Patch’,” CoreLogic, July 19, 2019, <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-2.aspx>.
- Pradhan, Archana, “Expiration of the GSE’s Qualified Mortgage ‘GSE Patch’ – Part 3: African American, Hispanic or Latino, and low-income borrowers, and borrowers buying properties located in underserved neighborhoods more frequent in the ‘GSE Patch’,” CoreLogic, July 26, 2019, <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-3.aspx>.
- Goodman, L. Pendall, R. and Zhu, J. (2015, June). Headship and Homeownership: What does the Future Hold? Retrieved from <https://www.urban.org/sites/default/files/2000257-headshipand-homeownership-what-does-the-future-hold.pdf>.
- <sup>ix</sup> CFPB, 2019, “Ability-to-Repay and Qualified Mortgage Rule Assessment Report,” [https://files.consumerfinance.gov/f/documents/cfpb\\_ability-to-repay-qualified-mortgage\\_assessment-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf), pages 10-12, 69-79, 194-196.
- <sup>x</sup> CFPB, 2019, “Ability-to-Repay and Qualified Mortgage Rule Assessment Report,” [https://files.consumerfinance.gov/f/documents/cfpb\\_ability-to-repay-qualified-mortgage\\_assessment-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf), page 117.
- <sup>xi</sup> CFPB, 2019, “Ability-to-Repay and Qualified Mortgage Rule Assessment Report,” [https://files.consumerfinance.gov/f/documents/cfpb\\_ability-to-repay-qualified-mortgage\\_assessment-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf), pages 10-12, 69-79, 194-196.
- <sup>xii</sup> See footnote 1.
- <sup>xiii</sup> See footnote 1.