Re:
Docket No. CFPB-2017-0014

Request for Information Regarding Ability-to-Repay/ Qualified Mortgage Rule Assessment

Mortgage Bankers Association

July 31, 2017

MORTGAGE BANKERS ASSOCIATION

July 31, 2017

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB–2017–0014 Request for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment

Dear Ms. Jackson:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the Request for Information (RFI) published by the Consumer Financial Protection Bureau (CFPB or Bureau) concerning the Bureau's plans for assessing the Ability-to-Repay (ATR)/Qualified Mortgage (QM) rule. MBA regards both this rule and its assessment or "look back" as crucial Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requirements of enormous significance. The ATR/QM rule, which MBA generally supports, sets the standards for safe, sustainable mortgage credit in the nation. It therefore is critically important to determine how the rule has been meeting its objectives based on available evidence and data and to discern areas in which adjustments are needed.

MBA appreciates the CFPB's efforts in developing its assessment plan and particularly welcomes the opportunity to submit (1) comments on the feasibility and effectiveness of the plan; (2) data and information that may be useful for executing the plan; (3) recommendations to improve the plan; (4) data and other factual information about the benefits and costs of the ATR/QM rule; (5) data and other factual information about the rule's effectiveness in meeting the purposes and objectives of the Dodd-Frank Act; and (6) recommendations for modifying, expanding and eliminating the rule.

[1] 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, D.C., 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 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, 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.

Our letter addresses all six of these points. While the assessment plan appears both feasible and effective, additional research should be directed to areas of concern to help expand the safe harbor to cover more creditworthy borrowers. The letter also identifies concerns with the current rules, including the need to develop a workable alternative to the QM patch. We recommend specific data and information that may prove useful, including MBA member (and other stakeholder) interviews and survey data, as well as specific areas to improve the assessment including reviewing cures and corrections.

We look forward to further opportunities to comment to improve both the assessment and the rule. MBA strongly believes a well-considered report with stakeholder input is essential to developing necessary revisions to this important rule.

I. Background/Context

The Dodd-Frank Act requires creditors to make a reasonable and good faith determination, based on verified and documented information, of a consumer's reasonable ability to repay the loan and any mortgage-related expenses prior to making a mortgage loan. The Dodd-Frank Act also establishes significant penalties and liability for failing to meet this requirement. The Act and the ATR rule provide a presumption of compliance for loans that are originated as QMs, which provides greater certainty to lenders and mortgage investors regarding potential liability where there has been compliance but a claim is made.

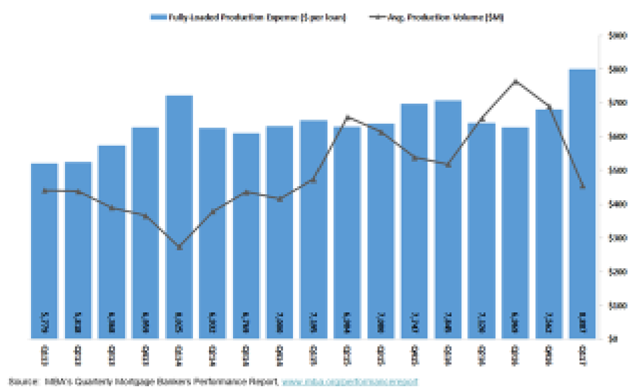
The rule establishes several categories of loans presumed to meet the ATR standards, denominated as QMs. To qualify for a general QM or "default QM," the creditor must comply with Appendix Q and ensure that the borrower's monthly debt-to-income (DTI) ratio does not exceed 43 percent. As an alternative, the rule provides that a loan may qualify for a temporary category of QM loans under what has become known as a "temporary patch" (patch). The patch applies if the loan proves eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac (the government-sponsored enterprises or GSEs). The patch will remain in effect until January 10, 2021 or the date on which the GSEs exit conservatorship, whichever is earlier.

Notably, mortgages also qualify as QM loans if they meet the requirements of the Federal Housing Administration (FHA), Department of Veterans Affairs (VA) or Department of Agriculture/Rural Housing Service (USDA/RHS) QM standards. There are also categories of QM loans for small creditor portfolio loans and for small creditors that operate in rural or underserved areas and make balloon loans.

Under the rule, QM loans are divided into loans for which the annual percentage rate (APR) is less than 150 basis points over the average prime offer rate (APOR), which are "safe harbor" loans, and loans for which the APR is 150 basis points or more over the APOR, which are "rebuttable presumption" loans. Considering that there is greater legal certainty in the event the safe harbor is met, the market has largely restricted itself to producing QM safe harbor loans.

Additionally, under the rule, the points and fees charged for QM loans are generally limited to 3 percent of the loan amount. The rule treats affiliate charges as part of the points and fees calculation and only permits increases in the permissible points and fees on a sliding scale for loans less than $102,894 (for 2017).[2] The costs of originating a loan have increased markedly over the last few years to approximately $8,887 per loan as refinance origination volumes declined in the beginning of 2017 (see Figure 1). Given the high costs to originate in today's market, MBA has consistently recommended the Bureau increase the ceiling on points and fees for loans between $100,000 and $200,000.

Figure 1: IMB Fully-Loaded Production Expenses ($ per loan)



Finally, the rules concerning calculation of points and fees are complicated, increasing the likelihood of errors in the calculation. A rule provision allowing lenders to identify and correct errors and provide refunds to borrowers expires January 10, 2021 and should be made permanent.

II. CFPB's Assessment Plan

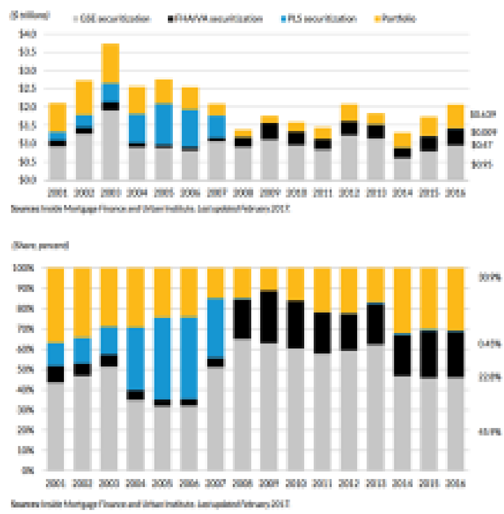
As indicated, the assessment plan outlined by the Bureau in the RFI appears both feasible and effective in terms of the issues it covers. MBA supports the Bureau's examination of the impacts of major provisions of the rule, including the ATR requirements and QM provisions with a focus on the DTI threshold, the points and fees threshold, the small creditor threshold and the Appendix Q requirements. We also think it is appropriate that the Bureau examine the impact of these provisions on a set of consumer outcomes including mortgage costs, origination volume, approval rates and subsequent loan performance.

[2] This amount is adjusted annually for inflation.

III. Areas of Concern

MBA urges, however, that research also be directed to several areas of concern. We urge these points be considered against a backdrop of a stalled homeownership rate of less than 64 percent[3] and a market in which lender and investor compliance risk tolerances keep them well inside the boundaries of the credit box.

Figure 2: Composition of Mortgage Originations



In order to better serve borrowers with safe, sustainable loans, we urge the Bureau's review of the ATR/QM rule to focus on the following issues and concerns:

1. Better serving millennials and immigrants who are entering the housing market, with many having significant earning capability but also having significant student and other debt.

2. The limitations of the 43 percent DTI requirement that does not include compensating factors—this is a blunt instrument that is preventing some creditworthy borrowers from obtaining loans.

3. Whether the underwriting guides for the GSEs and government programs could serve as alternatives to Appendix Q.

---

[3] U.S. Census Bureau, Housing Vacancies and Homeownership. Available at: https://www.census.gov/housing/hvs/index.html.

4. Mitigating the persistent difficulties with Appendix Q, particularly for self-employed borrowers and loans based on income derived from liquid assets.

5. Developing a long-term solution/alternative to the patch.

6. Whether the 150 basis point spread over APOR should be modified to define the safe harbor—it is believed that some creditworthy borrowers are provided with less affordable rebuttable presumption loans or non-QM loans, or are denied access to credit altogether.

7. Considering expansion of the safe harbor for several reasons, including fostering the return of private capital to the market (see Figure 2).

8. The extent to which non-QM credit is limited primarily to wealthier borrowers for whom the risk of default is low.

9. Whether the difficulties associated with originating non-QM loans are based on a lack of clarity on how to meet the general ATR requirements.

10. The impact of the 3 percent points and fees cap on the availability and cost of lower-balance loans.

11. The extent to which the inclusion of fees to affiliates in the points and fees calculation has impacted costs, convenience and the availability of "one-stop shopping."

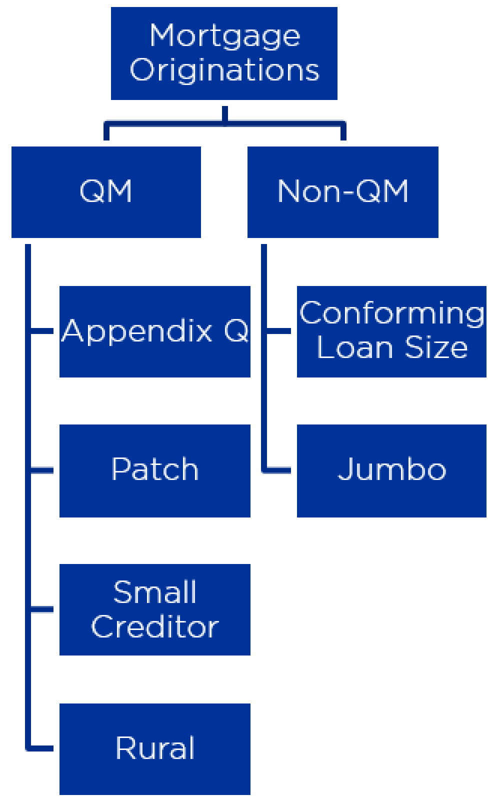
12. The extent to which the inclusion of fees to mortgage brokers in the points and fees cap, including for smaller loans, detrimentally affects credit availability to consumers—particularly those who are underserved.

13. The need for a permanent "cures and corrections process" that protects consumers and ensures that non-material errors do not undermine otherwise sound transactions.

IV. Additional Areas for Review

Specifically, in its review we would urge the CFPB to assess the role the rule is playing in the marketplace, including its ability to facilitate access to credit for consumers (in addition to the rest of the 1022/1021 factors).

Figure 3: QM and Non-QM Origination Categories



To do so, we suggest that the CFPB estimate the volume of mortgage originations in each category created by the ATR/QM regulation (see Figure 3), and within each category, the following aspects of lending should be described:

- Loan size
- DTI
- Loan-to-value (LTV) ratio
- Credit score
- Adjustable-rate mortgage (ARM) share (including across different DTIs)
- Geography
- Borrower demographics
- Performance

Consideration of geography is particularly important because the impacts of QM may be different in high-cost markets.

While the CFPB's assessment plan may delve into the following areas, we believe specific data needs to be developed by the Bureau from reliable, independent third-party sources concerning:

- Number of QM loans broken into safe harbor versus rebuttable presumption, along with the estimated number of non-QM loans. Using available sources of data, the Bureau should develop data on how many QM safe harbor, QM rebuttable presumption and non-QM loans were originated along with income, credit score and demographic data for each category.
- QM loan and non-QM loan performance—the Bureau should also develop data on performance of QM safe harbor versus rebuttable presumption loans.
- Performance of DTI versus patch QM loans—the Bureau should also analyze the performance of loans that could qualify as general QM loans under Appendix Q versus those that are QM solely by virtue of the patch.
- Performance of loans at various DTIs—before the 43 percent DTI was selected, the CFPB considered and provided for public comment Federal Housing Finance Agency (FHFA) loan performance data, and MBA believes fresh data on loan performance should again be obtained and offered for public comment. Observable compensating factors that may affect the performance of loans at various DTIs also should be better understood.
- Demand for loans at various loan amounts including at least $50,000, $100,000, $200,000, $300,000, $424,100 and $636,150 and above.[4]
- Volume and interest rates of small balance versus higher-balance QM loans.
- Comparative costs of originating a mortgage loan from 2008 to the present.
- Quantifiable effects of other rules, e.g., the effects of the loan originator compensation rule, on state agency loans.
- Comparative DTIs and performance of GSE, FHA, VA, RHS and other government loans.

V. MBA Looks Forward to Assisting Going Forward

Wherever possible, the CFPB should seek to leverage data from existing sources, such as industry databases (including MBA survey data), and HMDA, GSE and FHA/VA data. MBA also strongly supports the portion of the assessment plan providing that the CFPB will conduct interviews with creditors regarding their activities to comply with the requirements of the ATR/QM rule. We believe these subjective interactions will be particularly useful in providing information on borrowers who may not have been adequately served, as well as areas in which the rule can be otherwise improved. MBA would be happy to arrange meetings at MBA-sponsored conferences and otherwise to facilitate the review process. We would also be willing to facilitate surveys with our members and provide other MBA data under appropriate arrangements with the CFPB.

As indicated, MBA looks forward to providing other input and commenting as the assessment moves forward.

[4] For prior years, the last two categories should reflect the prior conforming and high-cost conforming loan limits.

VI. Recommendations for Change

We appreciate the Bureau's interest in seeking recommendations from stakeholders about possible modifications to the rule. Based on member feedback since the rule's implementation in 2014, MBA has long advocated:

1. Expanding the QM safe harbor to encompass a greater number of loans to serve a greater number of consumers with safe and affordable loans.

2. Increasing the threshold below which small-purchase loans are defined to permit increases in the points and fees limits to make smaller loans economically feasible. The current metric is too low considering the average loan size is over $240,000.

3. Approving alternatives to Appendix Q, including commonly accepted underwriting standards such as GSE, FHA, VA and RHS standards to use in conjunction with the default QM.

4. Replacing the patch and the default QM with a better, more transparent set of criteria including compensating factors. MBA has urged the CFPB to start the process of working with stakeholders to develop a transparent set of criteria, including compensating factors, to define a QM—replacing both the QM patch and the 43 percent DTI standard.

5. Pending development of a better replacement, the patch is essential and should be extended indefinitely and expanded to include jumbo loans that would be eligible for purchase and guarantees by the GSEs if not for their loan amount.

6. Revising the points and fees definition to exclude lender-affiliated companies.

7. Broadening, maintaining and extending the right to cure for points and fees to apply to DTI and for other technical errors on all loans, regardless of when the loan is closed. MBA believes there is a need for both a permanent points and fees cure as well as a DTI cure.

8. Making holistic changes to the ATR rule to better serve the entire market—not particular types of institutions with particular business models.

As data is acquired as part of the assessment, MBA is likely to further develop or augment many of these recommendations.

VII. Closing

MBA again appreciates the CFPB's important work on this assessment and our opportunity to comment. MBA looks forward to improvements in the rule to responsibly widen the credit box so that many more borrowers can benefit from safe, sustainable mortgage credit.

Should you have questions or wish to discuss these comments, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or kmarkison@mba.org, Justin Wiseman, Director of Loan Administration Policy, at (202) 557-2854 or jwiseman@mba.org or Dr. Lynn Fisher, Vice President of Research and Economics, at (202) 557-2739 or lfisher@mba.org.

Thank you for your consideration of our views.

Sincerely

Pete Mills
Senior Vice President
Residential Policy and Member Engagement