MBa
MORTGAGE BANKERS ASSOCIATION

July 7, 2014

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

Re: Docket No. CFPB-2014-0009; RIN 3170-AA43; Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to provide further comments on the proposed revisions to the 2013 Regulation Z mortgage rules proposed by the Bureau of Consumer Financial Protection (CFPB or the Bureau). Specifically, this letter addresses aspects of the proposal that requests comments within 60 days after Federal Register publication concerning a debt-to-income (DTI) cure and correction procedure for the Ability to Repay/Qualified Mortgage (ATR/QM) rule's 43 percent DTI requirement. The letter also addresses other areas where a cure procedure would be valuable to consumers.

MBA fully supports (1) establishment of both a cure and correction process for DTI issues, (2) consideration of extending some of the exceptions for smaller institutions to other lenders and (3) establishment of a correction process for mistakes resulting from typographical or data entry errors that do not in any manner affect the borrower's ability to repay the loan or present any risk of steering or other material violations.

Please note, in a separate letter dated June 5, 2014, MBA provided comments on other topics —notably including support of a proposed cure for QM points and fees errors—in the subject proposal.

I. Background

As we understand the proposal, the CFPB seeks comments on two possible areas for redress of DTI errors - "corrections" and "cures." The proposal also requests comment on the 500 loan threshold defining smaller creditors for purposes of the ATR rules and the Title XIV implementation experience for such creditors.

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[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 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, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

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Debt-to-Income - To satisfy the general qualified mortgage definition, the consumer's total monthly DTI ratio cannot exceed 43 percent at the time of consummation. Like an error made in calculating points and fees, errors made in calculating DTI ratios may disqualify a loan from QM status.

Correction - The proposal indicates the Bureau is considering whether it may be appropriate to establish a "correction" and/or a "cure" process to remedy issues in calculating DTI ratios. Establishment of a correction process would allow the submission of additional income or other documentation in instances where a DTI overage is the result of errors in documentation of debt or income or failure by the lender to use information on other income or debts that could reduce the DTI below the threshold and qualify the borrower. For a correction, the error could be remedied by submission of corrected documentation without need for monetary cure or restructuring.

In its proposal, the CFPB raises two potential issues regarding a DTI correction. One is whether allowing such corrections would somehow create disincentives for due diligence. The other is whether such a cure would present factual questions of what income and documentation the creditor was aware of at consummation and what was discovered after consummation.

Cure Process - A "cure" process could be used when no additional documentation is available but the lender seeks to remedy or cure a calculation where the DTI exceeds the 43 percent threshold. The proposal indicates that the Bureau believes that in these instances, the lender would presumably take some action to either reduce the numerator (the debt) or increase the denominator (the income).

The proposed rule solicits comments on whether such a cure procedure would be practical or if such restructuring of the loan post-consummation would be too complex.

The Bureau asks for comment on all aspects of the DTI cure or correction and in particular, asks for practical examples of where and how such approaches may be applied and implemented including time periods for cure or correction. It also asks how the cure or correction may be exploited by unscrupulous creditors.

Finally, the proposal requests comments on the maximum loan limit that in part determines whether a creditor meets the requirements to qualify as a small creditor for purposes of the small creditor QM requirements. Specifically, the proposal asks for input on the requirement that the limit be determined for any given calendar year based upon the results during the immediate prior calendar year and how the origination mix and product offerings might have changed in light of the rule.

II. Comments on DTI Correction

MBA appreciates the CFPB's consideration of a process that would allow lenders to correct the DTI calculation to include unused income and/or additional asset documentation. Lenders can incur considerable liability from a violation of the ATR standards. Consequently, most lenders, at least at this time, are confining their originations to QM loans to manage that risk.

The Bureau correctly notes creditors may in the interest of efficiency consider only certain income and debt when a borrower's income satisfies the 43 percent DTI—a practice permitted under the rules. As the proposal indicates, where a creditor or secondary market purchaser later discovers that income relied upon was overstated or additional debts existed that were not considered, it may be feasible for a creditor to correct a DTI ratio overage by considering documentation and additional income it knew about at the time of consummation but chose not to consider.

MBA fully supports establishment of such a correction process. Such a process as well as a "cure" process (see below), would benefit creditworthy borrowers with DTIs close to 43 percent by making more loans available to them because lenders could be less cautious in extending credit to these borrowers were a correction process established.

At the same time, such a process would not result in a relaxation of the QM's current DTI requirements; any documentation would still have to support a conclusion that the DTI met the QM requirements at the time of consummation.

MBA also does not believe such corrections would create disincentives for due diligence. It is in a lender's interest to calculate the DTI correctly the first time. Doing so avoids the significant costs of re-opening the loan file, reviewing documentation, and reprocessing loan documents following loan consummation.

Whether a loan is originated and held in portfolio by a lender or sold to an investor, its value is diminished significantly if it is not a QM. Market data shows that lenders primarily make QM loans, most secondary market purchasers only purchase these loans and available rate sheets are significantly lower for these loans compared to non-QM loans. If a loan is sold before discovery of failure to meet QM requirements, it will likely result in a costly repurchase. Considering these factors, lenders have spent considerable time and resources in training staff and modifying systems to ensure loans qualify as QMs. Considering the costs, it is unlikely that lessened due diligence will result from establishment of a cure.

MBA also believes that concerns about determining which documents were known before consummation versus documents known afterwards also should not preclude establishment of a cure. Any documentation used to correct the record would have to meet QM's standards and demonstrate the actual income or assets of the consumer at the time of consummation. Even if documentation were discovered post-consummation, assuming it were supportive of a qualifying DTI at the time of consummation, there is no evident harm to the borrower.

In addition, MBA urges that the rules explicitly provide that a DTI overage can also be corrected post-consummation by qualifying the loan through "the temporary patch" and using GSE or agency approval and eligibility to confer QM status. A loan that has a DTI that exceeds 43 percent but is eligible for GSE or agency purchase, guarantee or insurance should be treated as a QM loan whether it is run through the GSE or agency scoring model pre-consummation or not. Explicitly permitting post consummation use of the "patch" would allow lenders to correct unintentional errors efficiently and in a manner that requires few burdensome system changes.[2]

Finally, the CFPB should consider allowing a correction to proceed 60 days after discovery of an error, mirroring TILA's current cure provisions. While we recognize the Bureau proposes a 120 day post-consummation cure period for points and fees cures, DTI calculations are complex and review by lenders and then aggregators or investors is time-consuming. Moreover, since a correction involves a calculation that does not affect the terms of the loan or the borrower's

[2] Discussion with CFPB staff indicates that this is already a viable option. Making this explicitly clear in writing would be very helpful.

ability to repay, it is difficult to find a rationale that argues for any time limit that requires early response to the borrower. If a time period based on consummation is established nevertheless, the period for cure should be considerably longer than 120 days.

III. Comments on a Potential DTI "Cure"

MBA also supports a cure process for DTI errors. Ironically, under the ATR rule today, lenders cannot correct a calculation of the DTI threshold for QM loans, notwithstanding that the correction may assist the consumer's ability to repay.

Today, where a loan is found to exceed the DTI threshold, a lender has a limited number of options. These include: (1) re-financing the loan to a lower amount, (2) selling the loan in the scratch and dent market at a diminished value; or (3) for some institutions, holding it in portfolio at a diminished value. Considering these options and the liability attached to violations of the ATR requirements, MBA members report that DTI levels near 43 percent are considered "a red flag" and lenders are hesitant to make loans to borrowers with these profiles.

Establishment of a cure process, in contrast, would allow the lender to perform various actions post-consummation to ensure the loan meets the DTI standard and is a QM. These steps include reducing the principal due from the borrower or even paying a debt on the borrower's behalf. While these actions may prove cumbersome or expensive depending on the circumstances, access to these processes would be valuable. Moreover, we are confident that were this option provided, the market could be expected to work out any challenges including refinancing or modifying loans that have already been securitized or sold.

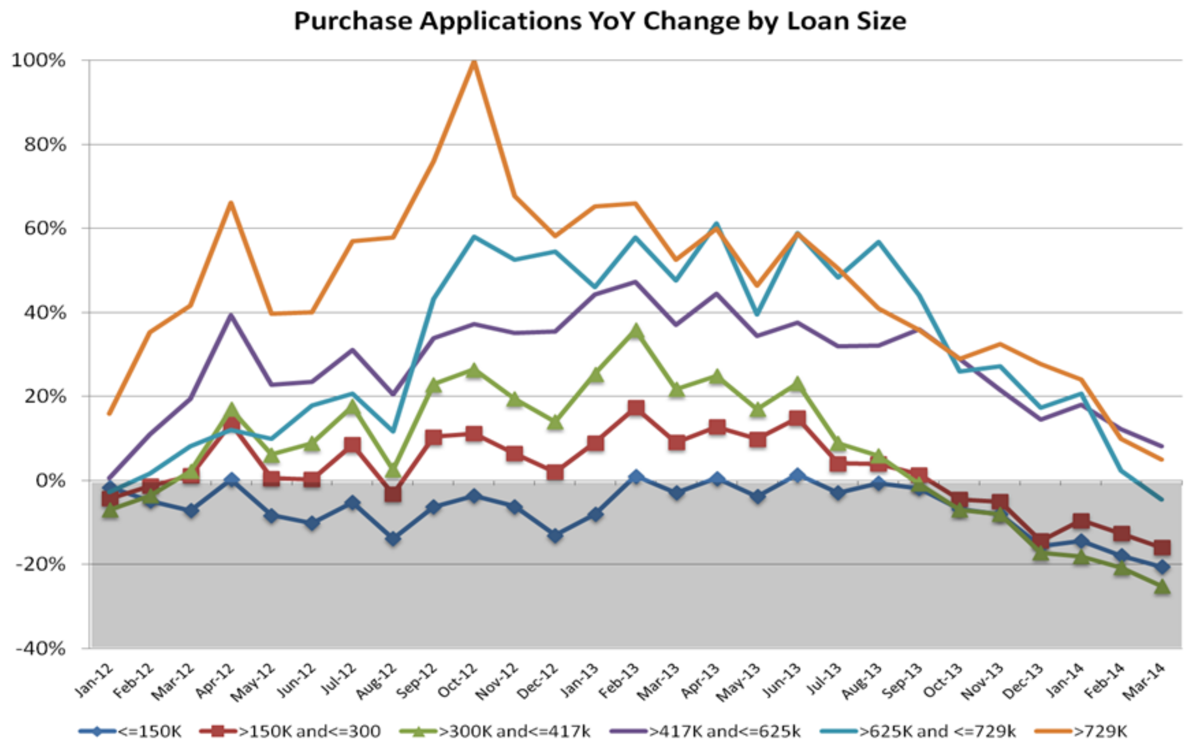
To avoid complexity, MBA believes that the cure provisions themselves should be simple and clear. Any action taken by a lender that reduces the consumer's DTI ratio to the required 43 percent level, based on income, assets and obligations known at consummation should be permitted as a cure. A lender should, for example, be permitted to modify a loan's principal balance to lessen the consumer's debt burden, offer to subsidize mortgage payments or make payment on any debt to accomplish the same goal. Codifying this in Regulation Z as a cure would help individual borrowers and reduce the incentives to avoid lending where the DTI approaches 43 percent and thereby help far more borrowers obtain safe, sustainable and affordable QM loans as well as increase the confidence of secondary market investors, thereby adding liquidity to the market and reducing costs to consumers.

IV. Comments on 500 Loan Limit

MBA has supported the special provisions under the rules for community banks but believes the Bureau should consider expanding these provisions to other creditors as well. If, for example, loans with APRs in excess of 150 bps over the APOR are satisfactory safe harbor QMs for smaller institutions to provide they should also be satisfactory products for other creditors to provide. Also, if balloon loans, for example, are good products for customers of smaller institutions they should also be good products for other lenders to provide.

MBA does not yet have data on how these provisions have affected lending. However, a few important observations can be made about lenders who made 500 loans or fewer. Based on HMDA data, 5,626 lenders made 500 or fewer loans in 2012. 6,206 made 1,000 or fewer. By increasing the small loan definition to 1000 loans the number of lenders covered would increase by 10 percent.

Notably, the average loan size for lenders who made 500 or fewer loans was $171,000, the average loan size for lenders who made 1,000 or fewer loans was $188,000, and the average loan size for all lenders was $217,000.



Some have indicated that there is no evidence that the new credit standards have an impact on lending activity. However, we have seen in the last year a significant decrease in loan application volume for smaller loans that are more likely to have been impacted by the new regulations. As shown in the above chart, the real decline began in September of 2013. Although the rules were not fully implemented until January of 2014, many lenders began to change their systems and lending standards as early as September as evidenced by MBA's Mortgage Credit Availability Index. The changes included restricting product menus to bring them into alignment with the QM definition.

Although jumbo lending continued to be strong into 2014, the housing market cannot thrive on just a jumbo market, and lending there is faltering as well. Clearly, other factors have impacted loan demand as well, including higher FHA premiums and generally higher mortgage rates, but the timing of the weakness in the lower end of the market suggests that the regulatory changes had an impact.

In view of these data, if only smaller creditors are to be offered exceptions, consideration also should be given to expanding the smaller creditor definition to non-depositories. Compliance with the new rules has been most difficult for smaller lenders generally, including depositories and non-depositories. It is well said that the concern has moved from "too big to fail" to "too small to comply." Smaller lenders of all types serve lower balance borrowers in underserved areas. Regulatory relief for smaller non-bank creditors should be considered.

V. Other Concerns

Although the proposal does not explicitly address "cures" or "corrections" beyond those discussed in Sections II and III above, other areas deserve attention. These include corrections of mistakes resulting from typographical or data entry errors that do not in any manner affect the borrower's ability to repay the loan or present any risk of steering or other material violations of the substantive rules.

Lenders report, for example, that loans are not being accepted for securitization as QM loans because the National Mortgage Licensing System Registration number is entered incorrectly or the name of a loan originator is misspelled. Not allowing cure of such mistakes works to deprive these loans of QM status, in turn, unduly adding costs to or limiting the availability of QM loans. Considering this point, we urge that the CFPB at the earliest date possible clarify its rules so these types of mistakes cannot be regarded as subject to the same consequences as other violations of TILA and that such mistakes may be cured routinely in the mortgage process.[3]

Finally, MBA believes that all cure processes permitted by the Bureau apply immediately so that loans in the pipeline can be addressed and consumers can access additional credit opportunities. In order to reach loans that have already been made, the rules should be made retroactive or additional time provided for their cure. We respectfully urge that there is no reason to delay the availability of this consumer benefit.

VI. Conclusion

MBA appreciates the opportunity to comment on this proposal and the Bureau's ongoing work to address issues with the 2013 mortgage rules. Continued refinement of the rules, including the establishment of DTI cures and corrections and other similar cure/correction processes, enhances the ability of the mortgage market to provide safe, sustainable and affordable financing to as many creditworthy borrowers as possible.

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[3] It appears that investor concerns regarding circumstances in which the name or NMLSR ID number of a loan originator is not included in a required loan document, or is entered incorrectly, stems from the fact that the Bureau implemented the Dodd-Frank Act requirement by setting forth the applicable provisions in Regulation Z section 1026.36(g). Regulation Z sections 1026.36(d) and 1026.36(e) contain restrictions on the compensation of loan originators, which were revised by the Bureau to incorporate restrictions set forth in the Dodd-Frank Act into the existing provisions previously adopted by the Federal Reserve Board. However, (1) the loan originator name and NMLSR ID requirements in Regulation Z section 1026.36(g) implement TILA section 129B(b), and (2) the loan originator compensation restrictions in Regulation Z sections 1026.36(d) and 1026.36(e) implement TILA section 129B(c), and the Federal Reserve Board originally adopted Regulation Z sections 1026.36(d) and 1026.36(e) under the authority in TILA section 129(l)(2) (which was designated TILA section 129(p)(2) by the Dodd-Frank Act). Non-compliance with TILA section 129B(b) is not subject to the same consequences as non-compliance with TILA section 129B(c) or requirements adopted under TILA section 129(l)(2) (now section 129(p)2)), but the inclusion of the NMLSR ID and name requirements in Regulation Z section 1026.36 along with the loan originator compensation provisions appears to have created concern in the industry regarding the ramifications of non-compliance with the name and NMLSR ID number requirements in section 1026.36(g). The Bureau should address the concerns by (1) clarifying the authority under which Regulation Z section 1026.36(g) was adopted, (2) clarifying that non-compliance with Regulation Z section 1026.36(g) is not subject to the same consequences as non-compliance with Regulation Z sections 1026.36(d) and 1026.36(e), and (3) creating an express cure for non-compliance with Regulation Z section 1026.36(g).

Should you have questions or wish to discuss any aspect of these comments further, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or at kmarkison@mba.org; or Joe Gormley, Assistant Regulatory Counsel, at (202) 557-2870 or at jgormley@mba.org.

Thank you for your consideration of these views

Sincerely,

Stephen A. O'C

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Mortgage Bankers Association