September 16, 2019

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

Re: Docket No. CFPB-2019-0039 or RIN 3170-AA98 (submitted electronically)

Dear Director Kraninger:

On behalf of the Massachusetts Mortgage Bankers Association, Mortgage Bankers and Brokers Association of New Hampshire and Rhode Island Mortgage Bankers Association we appreciate the opportunity to comment on the Advanced Notice of Proposed Rulemaking ("ANPR") to amend the Qualified Mortgage ("QM") definition under the Truth in Lending Act ("TILA") and the Ability to Repay ("ATR") rule.

The signatories of this letter represent, in their executive capacities with the undersigned associations, the majority of participants in the residential mortgage lending economy of New England including banks, independent mortgage lenders and licensed mortgage loan originators, and the vendors and service providers who work with them.

These comments are offered in response to the following issues identified in the CFPB's ANPR regarding the Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act ("ATR/QM Rule") in particular the impact of ending the temporary Government Sponsored Entity ("GSE") qualified mortgage ("QM") exemption due to expire on January 10, 2021 (the "GSE Patch") and its replacement with a "General QM" as it is described in the ANPR. While there are many issues of concern throughout the general mortgage lending industry, this letter will focus on the two of greatest importance to our members, particularly:

- The impact of reverting to the debt-to-income ("DTI") for General QM loans of 43% originally imposed by the ATR/QM rule; and
- The impact of limiting underwriting flexibility to only that provided for in the Appendix Q originally released with the ATR/QM Rule.

The DTI Cap of 43%

As other commentators have noted, the GSE patch has enabled lenders to extend credit to borrowers whose DTI exceeds the 43% cap in the General QM. As noted in a study by Core Logic[1], roughly 16% of loans originated in 2018 were QM-eligible solely due to the GSE Patch. In addition, from a New England perspective, and in a very small data sample, we found the same result: an independent mortgage banker with $4.5 billion in closings estimated that 25% of loans originated were QM eligible solely due to the GSE Patch and a depository credit union with $65 million in closings estimated that 17% of loans originated were QM eligible solely due to the GSE Patch.

Given the data now available (see the papers published by the Urban Institute and Core Logic cited in Housing Wire[2]) the CFPB does not have to speculate about whether a DTI of 43% or even the FHA's 57% is linked to an increased likelihood of default. We urge the Bureau to conduct an assessment on how non-GSE patch loans perform compared to GSE patch loans, and whether or not the 43% DTI threshold is the most efficient figure to use in determining the borrower's ability to re-pay. If a statistical correlation is not found, then an alternative to a rigid DTI should be considered such as net residual income and/or compensating factors fully documented and supported. In the alternative, the entire DTI analysis could be removed from the ATR analysis and replaced by the analytics provided by the GSE's proprietary Automated Underwriting Systems.

The use of Appendix Q as the sole underwriting standard

The New England economy in general is rich in human resources and they have a diverse earnings profile. Our major cities range in size from Boston, MA with a population of 685,000 to Burlington, VT with a population of 42,200[3]. According to a survey conducted by the Lumina Foundation in 2016[4], over 30% of the adults in the 6 New England states had either a graduate or post graduate degree. And

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[1] https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-1.aspx

[2] https://www.housingwire.com/articles/50119-wells-fargo-bank-of-america-quicken-loans-others-want-dti-requirement-eliminated-from-qm-lending-rules

[3] According to the most recent Census figures, also Providence, RI: 180,400; Hartford, CT: 123,400; Cambridge, MA: 113,600; Portland, ME: 66,800 and Concord, NH: 43,000.

[4] https://www.documentcloud.org/documents/2793162-Lumina-Foundation-2016-Stronger-Nation-Report.html

migration into New England, both international and domestic is increasing.[5] As a result, one profile of a New Englander who is in the process of buying a house, particularly in an urban area, is someone new to the city or town, the recipient of a recent job offer and frequently carrying student loan debt. But we are not just a region of millennial transplants either. A number of those degree holders do not work in a traditional corporate setting but rather are intentionally self-employed. The more rural population tends to be older and some are 'snow birds' with multiple residences; other populations include recent immigrants from other countries and those who self-identify with a specific ethnicity or nationality (which identity is not captured in HMDA data). And all of them have different employment profiles.

As a result, underwriting loans in New England requires a robust toolbox of options in order to meet the credit needs of applicants who can include those with new jobs, the self-employed, retirees who still do some work 'on the side' or are living off significant investments, those who work in a family business, those with low and moderate income and those who work multiple (frequently seasonal) jobs as well as those in the 'gig' economy.

Consequently, an abrupt transition from the varied underwriting criteria and eligible borrower profiles offered by the GSEs to Appendix Q's rigid, essentially W-2 based set of rules will have a serious and negative effect on potential New England borrowers.

As even the Bureau has noted, Appendix Q (itself based on old FHA guidelines from 2004) and its "methods for documenting debt and income can be rigid, that its provisions for determining what debt and income can be included in DTI calculations can be difficult to apply, and that it does not provide the level of compliance certainty that the Bureau anticipated. Stakeholders have reported that these documentation and determination concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams."

And Treasury, in its report on the future of the GSE's states: "Appendix Q, which was adopted from the outdated manual underwriting guidelines once used by FHA, lacks the clarity and detail necessary to provide a bright line safe harbor and should be either revised or removed. Modernizing Appendix Q to address self-employed borrowers, borrowers with non-traditional sources of income, and similar issues would address some of these issues."[6]

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[5] Economic Outlook for New England Regional & Community Bankers Conference October 25, 2018, Boston Federal Reserve

[6] U.S. Department of the Treasury Housing Reform Plan

Furthermore, by dint of being an Appendix to a federal regulation, the ATR/QM rules cannot be easily amended due to the constrictions of the Administrative Procedures Act. The GSEs, and individual lenders who place loans in portfolio are considerably more capable of crafting underwriting criteria which meet the needs of unique borrower populations as well as the assessing outcome of those loan programs for their default rates and other indicia of a proper analysis of the ability to repay.

In light of all these factors, we recommend that the Bureau should eliminate Appendix Q from the ATR/QM rule and replace it a standard that grants safe harbor status under the rule to any loan that meets the underwriting standards of the FHA, the VA, the RHS or USDA and/or the GSEs in force at the time of loan approval.

As the letter quoted in Housing Wire[7], and signed by 25 industry leaders and large lenders notes:
"*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 and with it, Appendix Q.*

Explicit QM Definition for State Housing Agencies:

In considering the definition of a qualified mortgage, we urge the Bureau to provide a clear, explicit QM definition for state housing finance agencies (HFAs). FHA, VA and USDA loan programs each have a QM definition separate from the general QM and the QM Patch currently under review. State housing finance agencies secure home loans according to prudent, safe underwriting guidelines. Investing in local home buyers, state housing finance agencies often do not have resources to define and enforce their own underwriting guidelines. HFAs will utilize the underwriting and documentation standards of federal and conventional loan programs. The Bureau should ensure that even after the expiration of the QM Patch, HFAs will be able to make loans as QM according to the same guidelines in use today.

Today, given the language of Senate Bill 2155 ("the Crapo amendment"), small banks under $10 billion in assets have an exemption for underwriting QM loans without Appendix Q and still presuming QM status. The Bureau should conclude that state housing agencies have the same risk profile and fewer resources than

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[7] https://www.housingwire.com/articles/50119-wells-fargo-bank-of-america-quicken-loans-others-want-dti-requirement-eliminated-from-qm-lending-rules

small banks. The exemption given to small banks should be amended to include state housing agencies.

We must ensure that our traditionally underserved applicants including low-to-moderate income households and communities continue to have access to credit. According to statistics provided to us from MassHousing, in the past 6 years 2,729 loans ($706,354,745.00) were made to applicants through MassHousing exceeding the 43% DTI threshold. Of these loans, 1,024 ($246,266,245.00) were made in gateway cities across Massachusetts. Commitment to affordable housing and lending is not just part of our obligations under CRA but our obligations as lenders in the mortgage industry.

In closing, we believe the Bureau should modify ATR/QM by removing the arbitrary limits on DTI, and permit the use of flexible, yet prudent underwriting standards to to expand access to credit for the self-employed, non-traditional and underserved credit applicants. We look forward to our continued work together to improve rules and regulations so that consumers truly benefit.

Thank you for your time and consideration on this matter that affects our members, and their clients and customers. If we may be of any assistance, please do not hesitate to contact any of the undersigned:


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