September 16, 2019

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

Re: ATR/QM ANPR; Docket CFPB-2019-0039

Dear Director Kraninger,

The Independent Community Bankers of America ("ICBA")[1] welcomes the opportunity to comment on the advanced notice of proposed rulemaking ("ANPR") published by the Consumer Financial Protection Bureau ("CFPB" or "Bureau") regarding changes to the Ability-to-Repay ("ATR") and Qualified Mortgage ("QM") standards. In particular, the CFPB requests feedback on allowing the expiration of a specific category of QMs that are eligible for purchase or guarantee by the government sponsored enterprises ("GSEs") Fannie Mae and Freddie Mac, a category also known as Temporary GSE QM loans or the "GSE Patch." Additionally, the CFPB is requesting input on other possible changes to the ATR/QM Rule, including whether to revise

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $5 trillion in assets, nearly $4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
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the general definition of QM and Appendix Q's criteria for verifying and determining debt and income.

ICBA recognizes and appreciates the Bureau's efforts to reexamine its statutory duty to implement rules that satisfy the requirements established by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act") and the Truth in Lending Act ("TILA" or "Regulation Z"). This detailed ANPR contemplates administrative changes to the ATR/QM Rule, the debt-to-income ("DTI") ratio metric, Appendix Q, and the GSE Patch, among others.

In this letter, ICBA explains the important role of the GSE Patch ("Patch") for community banks in the years following the financial crisis up through the present day. Many community banks rely on the Patch to easily gain QM status and legal protection on certain mortgage loans which are being sold to the GSEs. We also suggest possible changes the CFPB should consider regarding the Patch's expiration and changes to Appendix Q and the DTI ratio. While the Patch mainly applies to loans that would be sold to the GSEs, it is important to recognize that any changes that remove the Patch and/or modify QM/ATR will impact all mortgage loans originated, regardless if these loans are sold to GSEs, retained in portfolio, or securitized into private label securities ("PLS"). Also, changes made to the QM/ATR rule impact the qualified residential mortgage ("QRM") rule for mortgage-backed securities that sets mandatory risk retention standards for PLS issuers and will have far-reaching impacts on the PLS market.

Background

In January 2013, the CFPB issued its final ATR and QM Standards rule that implemented relevant sections of the Dodd-Frank Act and amended Regulation Z. Dodd Frank stipulated that QM loans cannot be negatively amortizing, have fees that add up to more than 3 percent of the loan amount, have a balloon payment, or have terms greater than 30 years. The CFPB's corresponding ATR/QM rule became effective on January 10, 2014 and has had a profound impact on mortgage lending for all lenders and mortgage borrowers alike.

The ATR/QM rule requires all creditors to make a reasonable and good faith determination of a borrower's ability to repay the mortgage loan, including any other mortgage-related obligations such as property taxes, and to document and verify the information used in making that determination. These requirements do not apply to investment property loans, open-end home equity lines of credit, timeshare plans, reverse mortgages or temporary loans.

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The ATR/QM rule describes the methods and types of information to be collected by the creditor to verify and validate the borrower's ability to repay the loan. The Bureau included Appendix Q in the final QM/ATR rule to provide detailed requirements for documenting and validating a borrower's ability to repay that includes income and employment information, assets, outstanding debts, and credit history. The Bureau also required use of a debt-to-income ("DTI") ratio – a commonly used metric to measure the borrower's financial leverage. The rule specifies a maximum debt-to-income ratio of 43 percent. Finally, the annual percentage rate ("APR") may not exceed 150 basis points over the average prime offer rate ("APOR").

Loans insured under the Federal Housing Administration ("FHA"), Rural Housing Services, and the Veterans Administration are automatically deemed QM; the rule also considers mortgage loans by banks that satisfy the small creditor exemption requirements, and loans eligible for guarantee or purchase by Fannie Mae and Freddie Mac, to be QM loans. Lenders that originate QM loans enjoy legal protections from liability against borrowers seeking damages under TILA.

The small creditor exemption is especially important to community banks lending in small towns and rural markets. By reducing the regulatory burden of Appendix Q for certain small lenders, the CFPB allows those institutions the flexibility and legal certainty to tailor mortgage loans to meet borrowers' needs in their local communities throughout the United States. The Bureau also created a definition of "rural" which provides three exemptions to mandatory escrow requirements and permits balloon loans originated by rural institutions and retained in portfolio to receive QM safe harbor treatment. The current small creditor exemption applies to depository institutions with assets of $2 billion or less, that originate 2,000 or fewer loans annually, and the QM-designated loans must be held in the originating lender's portfolio for at least three years. To qualify for the rural exemption, depositories must meet the small creditor thresholds and have originated at least one mortgage loan in a CFPB-designated rural area during the last two years.

The Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCP Act" or "S.2155") was signed into law by President Donald Trump on May 24, 2018. Section 101 of that law created an additional QM safe harbor category for mortgages made by depositories with less than $10 billion in assets that originate and hold those mortgages in portfolio for the life of the loan. Both the small creditor exemption and the S.2155 Portfolio QM provision only apply to insured depositories.

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ICBA Proposals for Loans Not Originated by Small Creditors or Subject to the QM Portfolio Provision

The GSE Patch is scheduled to expire seven years after the effective date of the Rule (January 10, 2021) or earlier if the GSEs cease to be in conservatorship. ICBA applauds the Bureau for taking proactive steps to recognize the implications of this expiration and addressing how various decisions might affect the broader market. The GSE Patch has enabled access to homeownership for nearly 3.3 million creditworthy borrowers who together represent nearly 20 percent of the loans guaranteed by the GSEs over the last decade.[2] A study shows that the GSE Patch accounted for roughly 16% or nearly $260 billion in 2018 total loan origination volume.[3] Without the Patch these loans would not have been QM-eligible, and it remains unclear to what extent these loans might be absorbed by the private market and/or alternative government agencies like FHA.

It is therefore crucial that the CFPB move cautiously in allowing the removal of the Patch, as it impacts a significant portion of borrowers in the residential mortgage market. ICBA urges the Bureau to work with all stakeholders, the Department of Housing and Urban Development (“HUD”), the Federal Housing Finance Agency (“FHFA”), the GSEs, industry groups, and consumer and housing advocacy groups to fully understand the impact on the broader market resulting from any changes that the Bureau is contemplating. As stated earlier in this letter, removal of the Patch will have far-reaching impacts on the mortgage market and the availability of mortgage credit.

ICBA recommends the Bureau, working with the FHFA and the GSEs, undertake a detailed study on how the expiration of the GSE Patch might impact the industry. Some of the major concerns of ICBA members about the GSE Patch’s expiration include: a subsequent lack of flexibility from having to comply with the stringent standards of Appendix Q, restrictions on credit availability, and an overall increased regulatory burden. Moreover, the overall uncertainty regarding the long-term consequences of allowing the Patch to expire is reflected by a view that the expiration will have a significantly negative impact on mortgage lending.[4]

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[2] https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch

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

[4] Conclusion is based on data from an August 2019 survey sent to ICBA leadership bankers on the topic of ATR/QM.

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ICBA encourages the CFPB to extend the GSE Patch for as long as it takes to conduct this research. It is also crucial to factor in the time it will take for the industry to implement any new practices pursuant any changes to QM/ATR.

Regardless of the fate of the GSE Patch, we believe the DTI ratio metric should remain in some form as a measure of ability to repay. As mentioned earlier, the DTI ratio has been a part of sound mortgage underwriting for decades, and while it may not be a perfect indicator of a borrower's ability to repay, when used with other factors of the borrower's financial situation, it helps complete a picture of the borrower's ability to reasonably repay their loan. ICBA recommends that the DTI metric be modified, as necessary, based on detailed feedback from the study referenced above, allowing for a range of percentages (43-45%) that would denote a QM safe harbor designation, and a provision for a higher DTI range (45-50%) that would result in rebuttable presumption of QM. Loans with DTI ratios in excess of the 50% level would be considered non-QM.

In addition to creating a range for the DTI ratio metric, ICBA recommends the Bureau modify Appendix Q to include compensating factors that could be considered when analyzing a borrower's ability to repay. The Bureau should consult with the GSEs regarding their use of compensating factors to justify higher DTI ratios for certain borrowers.[5] Though some argue that DTI should be removed as a metric for determining ATR, a recent ICBA member survey suggests that community banks prefer the Bureau to change the DTI limit, as suggested above, along with adopting additional or alternative measures for documenting borrower income and use of compensating factors instead of abolishing DTI and Appendix Q.[6]

Underwriters typically view DTIs as guidelines, not hard and fast rules, and would prefer to consider other compensating factors such as: demonstrated ability to save, demonstrated ability to devote a higher percentage of income to housing, other borrower assets which could be liquidated to pay the loan, and demonstrated ability to manage credit in determining ability to repay.

The Bureau should modify Appendix Q documentation requirements to make a provision for self-employed borrowers and give creditors more flexibility in qualifying these borrowers. The GSE and mortgage insurance company requirements are more flexible than Appendix Q, making

[5] https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-a-smarter-qualified-mortgage-july2019.pdf
[6] Ibid, recent ICBA survey.

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it challenging for creditors when underwriting loans either retained in portfolio or sold to other private mortgage investors. Harmonizing the self-employed provisions of Appendix Q with GSE guidelines will help improve access to credit for self-employed borrowers without compromising consumer protections or credit quality.

The combination of the expiration of the GSE Patch and inflexibility of the 43 percent DTI will likely exacerbate the problem of many well qualified borrowers not having access to mortgage credit or will cause those borrowers to pay higher rates for that mortgage credit. This would especially impact borrowers with fixed incomes, retired borrowers, minority borrowers, immigrant borrowers, or borrowers starting out in new careers.

ICBA also requests the CFPB to act expeditiously to provide additional guidance on QM changes made by the EGRRCP Act. The Bureau should clarify that institutions with less than $10 billion in assets are not subject to the documentation requirements and DTI ratio test found in Appendix Q. Though passage of the law allows banks to take advantage immediately, community banks await further clarification on its implementation via authoritative guidance or an FAQ.

ICBA appreciates the opportunity to comment on the ANPR and looks forward to working with the CFPB throughout the process of finalization and implementation. If you have any questions regarding this letter, please contact me at ron.haynie@icba.org.

Sincerely,

/s/

Ron Haynie
Senior Vice President, Mortgage Finance Policy