CONSUMER BANKERS ASSOCIATION

The Voice of the Retail Banking Industry

July 31, 2017

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

Via electronic submission

Re: Response of the Consumer Bankers Association to the Request for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment (Docket No. CFPB-2017-0014)

Dear Ms. Jackson,

The Consumer Bankers Association ("CBA")[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's ("Bureau") Request for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment. These comments plan to address the following issues presented by the CFPB's Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act[2] ("ATR/QM Rule"): (1) the temporary Government Sponsored Entity ("GSE") qualified mortgage ("QM") exemption that will expire in January of 2021; (2) changing the methods of calculating debt-to-income ("DTI") for standard QM loans; (3) reassessing the QM DTI threshold of 43%; and (4) the burdens the current DTI requirements place on borrowers and lenders.

CBA notes that this rule should be assessed from the perspective of all the purposes and objectives laid out in Dodd-Frank Act § 1021 & 1022,[3] ensuring the Bureau identifies and addresses outdated, unnecessary, or unduly burdensome rules, within the scope of their rulemaking authority. Per § 1022(d)(3), CBA encourages the CFPB to address both the general definition of QM and the temporary GSE QM "patch" in their assessment to "modify, expand, or eliminate"[4] the rule. Additionally, both lenders and borrowers could greatly benefit from the Bureau conducting an assessment on how non-GSE patch loans perform compared to GSE patch loans, and if the 43% DTI threshold is the most efficient figure to use in non-GSE patch loans.

[1] The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.
[2] 12 CFR Part 1026.
[3] *See* 12 U.S. Codes § 1021(b)(3), 1022, *available at* https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.
[4] 12 U.S. Code § 1022(d)(3), *available at* https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

However, with the temporary GSE patch set to expire, the Bureau should first and foremost make the patch permanent to avoid burdening the industry in the case of its expiration.

I. Making the Temporary GSE QM Patch Permanent

Under the CFPB's ATR/QM Rule, a loan may be a QM if it is eligible for purchase or guaranteed by a GSE while under conservatorship, or until seven years past the effective date of the rule. This GSE patch is currently set to expire on January 10, 2021. Under the ATR/QM Rule, a lender is not required to comply with all GSE requirements for purchase, guarantee, or insurance to attain QM status. Specifically, compliance is not required for issues such as selling, securitizing, or other post-consummation requirements unrelated to underwriting and the consumer's ability to repay the loan.

CBA advocates that the GSE patch should be made permanent, as the use of GSE compensating factors for approvals, regardless of DTI, has allowed lenders to innovate and practice responsible lending procedures consistent with Bureau's intent when drafting the rule. Specifically, the fact that all loans sold to GSEs automatically qualify as QM provides a great benefit to both borrowers and lenders by significantly reducing the amount of burdensome and oftentimes confusing paperwork that goes into the mortgage application, allowing lenders to lend more efficiently, and to more individuals. Due to the advantages of the GSE patch, many of CBA's member banks make the vast majority of their loans under the patch, and may be greatly hindered when the patch expires. Conversely, data from the Urban Institute shows that QM loans made outside of the GSE patch, needing a DTI of 43% or less to qualify as QM, have been cut by more than half in the past two years,[5] showing why this safe harbor is so important to the home equity market. As such, the GSE patch needs to be made permanent to avoid the whole market experiencing the same drop-off in loans.

CBA members also note the vast amount of documentation needed to make a non-GSE patch loan prohibits them from properly innovating in the space, in addition to substantially decreasing the banks opportunity and ability to lend to an individual. The vast amount of paperwork required to meet ability-to-repay criteria often leads consumers to become frustrated with the mortgage process and back out, or turn to lenders who do not have to comply with QM rules and provisions. Further, this frustrates consumers when they apply for loans; for example, a borrower who wants a $25,000 home equity loan for a kitchen or bath remodel must go through the same process as a customer attempting to purchase a $500,000 home. Similarly, the underwriting costs for lenders are often the same for each loan.

Consumer frustration with the lending process often leads to borrowers and applicants dropping out of the lending process, and often, applications become inactive when banks are unable to collect the required documents for a non-GSE patch loan. Data shows that this is primarily affecting borrowers looking for home equity loans in amounts less than $100,000,[6] leading to low and moderate income borrowers, rural borrowers, and borrowers seeking smaller-than-

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[5] *See* Urban Institute, *Has the QM Rule Made It Harder to Get a Mortgage?*, *available at* http://www.urban.org/research/publication/has-qm-rule-made-it-harder-get-mortgage.
[6] *Id.*

average loan amounts dropping out of the process altogether. Extending the temporary GSE patch would help alleviate consumer frustration moving forward.

If however, the Bureau chooses to allow the GSE patch to expire, then the GSEs need to issue rules to take effect after the patch expires. If this course of action occurs, the GSEs need to issue rules by 2018 to allow CBA's members to properly comply, meaning GSEs need to issue any rule proposals in the coming months. Allowing banks to comment on these proposed rules is a crucial element of ensuring they are properly crafted, and complied with. Given the tight timetable this process thus hinges on, and the great benefit that the patch provides for both lenders and borrowers, CBA requests the Bureau make the current GSE patch permanent.

Finally, the Bureau states that it will assess potential outcomes of the rule that were considered reasonable possibilities at the time the rule was issued. One of these reasonable possibilities was for significant housing finance to occur. However, given the uncertain landscape potential housing finance reform would create, and uncertainty about if reform ever will come, the Bureau should address its ATR/QM Rule under the context of whatever situation happens to occur. Lacking any significant housing finance reform in the near future, the Bureau should instead elect to make the current temporary GSE patch permanent.

II. Changing Methods for Calculating DTI to the GSE Model

Currently, the ATR/QM Rule prescribes for different methods of calculating income and debt (for determining DTI) for a standard QM loan as opposed to QM loans made under the GSE patch. The ATR/QM Rule allows the GSE's and Federal Housing Administration ("FHA") to use more flexible methods of calculating income and debt than in the general definition of QM prescribed in Appendix Q of the ATR/QM Rule. Extending the GSE methodologies of calculating DTI, regardless of whether the loans fall within the GSE patch, would free the market from having to use Appendix Q's burdensome standards for qualifying income and debts for jumbo loans or loans that are otherwise not conforming. While the DTI methods set forth in Appendix Q are relatively straightforward for basic wage earners with a W-2 and who may own a house and other basic assets, many of the customers CBA member banks work with do not fit this simple profile, and as such, could greatly benefit from the GSE and FHA DTI methodology being extended to all QM loans. Further, if the GSE methods are not extended prior to the patch expiring, the FHA methodologies for conducting DTI could still be used and incorporated into the general QM requirements. The use of more flexible DTI methods incorporated in GSE and FHA loans will greatly increase lenders' ability to operate in this space and effectively lend to more consumers.

III. Reexamining the 43% DTI Threshold

Under the ATR/QM Rule as it currently stands, a 43% DTI ratio is the threshold at which QMs are set. CBA requests that under the data analysis the Bureau is conducting for this rule, they re-examine if 43% is the best number for borrowers and lenders. In the Urban Institute study referenced above,[7] it is mentioned that the data for this study was sparse and could use more support. The Bureau carefully examining the 43% DTI threshold could help ensure the

[7] *See* note 5.

marketplace is properly aligned with the best industry standard. As part of its assessment, CBA recommends the Bureau examine: (1) default rates based on DTI, (2) different DTI rate performances, and (3) performance of loans outside the conventional loan underwriting guidelines. Fannie Mae is already beginning to use higher DTI thresholds of 45%, and even 50%.[8] If the Bureau finds that there are no significant changes at DTIs higher than 43%, the Bureau should seriously consider other methods for determining if a loan is QM, or if the DTI threshold should be raised.

IV. Issues within Current DTI Requirements

Under the Bureau's ATR/QM Rule's Appendix Q, many factors are considered in determining a DTI ratio for QM eligibility. Below are some recommendations the Bureau should consider to make the rule more efficient and usable for borrowers and lenders:

a. Social Security Documentation

Borrowers and lenders would greatly benefit from the Bureau only requiring an awards statement or proof of receipt of Social Security retirement income in a borrower's application. The proof of receipt should be evidence of a direct deposit or checking statement showing the Social Security funds were deposited in an applicant's account. For the non-taxable portion of Social Security income, lenders should be permitted to gross up the standard 125%, instead of at the applicant's tax rate, as this will make the process easier and less burdensome on the borrower, without any impact on underwriting. Award letters or proof of receipt should be permitted to prove other types of Social Security income.

b. Tax Returns

Currently, signed tax returns are a requirement for determining DTI under Appendix Q. The vast majority of consumers, however, file and sign their tax returns electronically using PINs, e-sign, and other methods.[9] The requirement for signed tax returns is now outdated, and an unnecessary burden for CBA members' customers.

c. Current Leases on Rentals

Requiring applicants to submit current lease information is duplicative as lenders are already required to collect tax information for at least two years. Also requiring lease on rental information stands as another burden to applicants, and prohibits CBA members from efficiently lending to consumers.

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[8] *See* Fannie Mae, B3-6-02: Debt-to-Income Ratios, (July 25, 2917), *available at* https://www.fanniemae.com/content/guide/selling/b3/6/02.html.

[9] Latest IRS figures show that 92% of individuals now e-file their taxes. *See* IRS, 2017 and Prior Year Filing Season Statistics, *available at* https://www.irs.gov/uac/2017-and-prior-year-filing-season-statistics.

d. Military add-ons to Income

CBA recommends eliminating the written verification of continuance requirement under the military add-ons to income section. Requiring military applicants to provide written verification of these add-ons such as basic allowance for housing or subsistence, puts additional burdens on a class that does not also apply for civilian wage earners, and is almost impossible for military applicants to obtain.

e. Part-time Income

The current requirements surrounding part-time income are in need of clarification. While the Bureau acknowledges that many low-to-moderate income families rely heavily on part-time and seasonal income, the Bureau also requires the applicant to prove a two year history of such income. Given the amount of time it takes to properly document and assess a two year history of income, applicants essentially need to have been working up to three years to be able to apply for the loan, which is an extremely burdensome requirement to place on applicants. Further, it is not clear in the rule if the income can come from any part-time job held during the two year period, or if it must be from the same part-time job, so clarification on this issue would be welcomed as well.

f. Profit & Loss Statements for Sole Proprietors & Partnerships

CBA advocates that the requirement for a balance sheet and a profit and loss statement for sole proprietors and partnerships should be eliminated from the ATR/QM Rule. It currently stands as a burden to both borrowers and lenders, with little demonstrated benefit, as this income rarely helps a lender determine an applicant's income. CBA members note that oftentimes, applicants are not able to provide accurate information as they do not have the proper data readily available to complete the information at hand, and lenders do not consider applicant-produced profit and loss statements over the historic information presented on tax returns. As such, two years of tax returns should be sufficient for the documentation currently required under the rule, while significantly relieving the burden on lenders and borrowers.

g. Family Owned Business

CBA advocates that further clarification is necessary regarding what the Bureau considers a "family owned business." Under the current rule, it is unclear as to which extended family members are covered. Lending to small businesses would be much more efficient, both for borrowers and lenders, if this definition was clarified.

h. Verbal Verification of Employment

Instead of requiring verbal verification of employment, applicants would be significantly less burdened if the Bureau instead required a current pay stub. Many employers will not provide verbal verification, and applicants often have privacy concerns with disclosing to their employer that they are seeking a loan. Often, CBA members use "The Work Number"[10] to verify this

[10] A commercial verification service provided by Equifax Inc. *See* https://www.theworknumber.com/.

information, which is substantially similar to a current pay stub. Requiring verbal verification places an unnecessary burden on borrowers and lenders, and should no longer be required.

i. Extended Absence from Workforce

Appendix Q refers to borrowers who leave the workforce to raise children and return under the section dealing with borrowers returning to work after an extended absence. One of the requirements under this provision is that the applicant provides a W-2 from their old position. If the applicant has taken time off to raise a child, the information from that W-2 is often outdated, and imposes needless burden on the borrower. CBA recommends that in these situations, a simple statement of explanation from the borrower should be sufficient for the application.

j. Projected Income from a New Job

Under Appendix Q's section on projected income from new jobs, lenders are required to get a non-revocable employment contract, which is virtually impossible. While lenders are often able to acquire a contract, it is almost never non-revocable, as employment is generally on an "at will" basis, so it is highly unlikely an employer will ever provide a non-revocable employment contract. As such, the requirement should be eliminated.

k. Credit Profiles

For borrowers anticipated to rely on income from assets to repay the loan, banks should be permitted to make their decisions based on a consumer's overall credit profile, including looking at the customer's credit score, and the loan-to-value ratio. For borrowers seeking smaller-than-average loan amounts, banks should be permitted to base their decision on if the applicant falls within a higher credit score bracket, and the Bureau should relax guidelines for loan-to-value ratios if the credit score analysis supports the transaction.

l. Decline in Income

The Bureau needs to issue guidance on what a decline in income means. With no standard or set figure outlined in the rule, the industry is often left to determine this figure for itself, and as such, the Bureau outlining a more specific figure would be greatly appreciated.

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CBA greatly appreciates the Bureau's assessment of its ATR/QM Rule, and notes that the Bureau should conduct its assessment under all the requirements and perspectives of the Dodd-Frank Act § 1021 & 1022. CBA reiterates that a permanent extension of the GSE patch for QM will greatly benefit borrowers and lenders, and a failure to make the patch permanent would have dire consequences for both groups. CBA also hopes the Bureau will conduct a thorough analysis of the 43% DTI threshold, to ensure that 43% is the optimal ratio for the industry, while also extending the DTI methodologies used by the GSEs and FHA to general QM rules. Finally, CBA notes the issues many of our members have with the rule as it stands currently, especially considering many of the burdens Appendix Q lays on both borrowers and consumers.

CBA greatly appreciates the opportunity to comment on the Bureau's assessment of the ATR/QM Rule. Should you need further information, please do not hesitate to contact the undersigned directly.

Sincerely,

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