

September 8, 2020

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

Dear Director Kraninger:

The undersigned organizations write to the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) regarding its Notice of Proposed Rulemaking¹ (“NPR”) on changes to the General Qualified Mortgage (“QM”) definition as part of the Bureau’s Ability-To-Repay/Qualified Mortgage (“ATR/QM”) Rule.² Our organizations represent a diverse set of housing finance stakeholders, including consumer groups, lenders, real estate professionals, civil rights organizations, and mortgage insurers, and we appreciate the opportunity to share our collective perspectives on this important rulemaking. There are four key areas of the regulation in which we request the Bureau’s consideration: (a) no presumption or inferences relating to fair housing/fair lending, (b) an increase in the Safe Harbor rate spread threshold, (c) an increase to the overall QM cap,³ and (d) an alternative treatment for short-reset adjustable-rate mortgages (“ARMs”).

We will address each of these proposed changes, but first would like to emphasize the importance of the collaborative work of this group. Our organizations advocate for regulations that promote access to affordable financing, effective consumer protections, and sustainable homeownership. Most of the signatories to this letter agree with your decision to remove from the QM definition the fixed debt-to-income (“DTI”) ratio requirement for prime and near-prime loans, and all agree that, upon removing a stand-alone DTI ratio, the rule could be enhanced through a few additional modest changes. Thus revised, the new approach to QM will prevent disruption resulting from the expiration of the temporary Government-Sponsored Enterprise (“GSE”) Patch. It also will help preserve access to credit and assist in permitting fair competition and innovation in the mortgage finance industry.

No Presumption of Fair Lending Compliance

The addition of a QM pricing cap to the regulation is a feature that reinforces the importance of a thorough assessment of a borrower’s ability to repay the mortgage. Pricing, when applied appropriately, can serve as an indication of credit risk in mortgage transactions and the use of the new QM rate spread cap follows this tradition.

However, pricing discrimination can affect a borrower’s ability to repay and it is therefore incumbent upon the industry and government regulators to embrace and advance the execution and enforcement of critical fair housing and fair lending rules. Housing discrimination in loan pricing – from the intentional to the inadvertent – remains a challenge that must be continuously monitored and addressed and the CFPB should reiterate, in this regulation, its commitment to this cause. We urge the CFPB to consider articulating explicitly in the preamble or this rule that the QM and/or Safe Harbor designation for mortgages does not denote

¹ 85 Fed. Reg. 41716 (July 10, 2020).

² 78 Fed. Reg. 6407 (January 20, 2013).

³ While not all signatories to this letter would advocate for this change, none oppose CFPB consideration of this suggestion.

compliance or override non-compliance with the Fair Housing Act, the Equal Credit Opportunity Act, or other consumer protection laws pertaining to mortgage lending.⁴

Increase the Safe Harbor Threshold

Qualified Mortgages are presumed to satisfy the ATR requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), and the Bureau in its 2013 rule-making decided to rely on a pricing measure to establish the portion of QM loans that are conclusively presumed to fulfill ATR and the portion that are subject to a consumer rebuttal. The Safe Harbor threshold is retained as-is in this 2020 proposed rule, permitting only those QM loans priced within 150 basis points (“bps”) of the then-current Average Prime Offer Rate (“APOR”) to be protected from rebuttal. We believe that the Bureau can, and should, increase the rate spread that is used to delineate Safe Harbor loans from 150 to 200 bps over the then-current APOR.

Market data provide evidence that lenders favor Safe Harbor QM and may avoid originating Rebuttable Presumption QM loans to reduce their liability risk. Bureau data demonstrate that less than five percent of QM conventional purchase loans originated in 2019 had rate spreads in excess of 150 bps and therefore were Rebuttable Presumption mortgages.⁵ Safe Harbor QM mortgages, for all intents and purposes, have defined the vast majority of the conventional market in a responsible and sustainable manner.

Therefore, we believe that an increase in the QM safe harbor threshold will expand the population the conventional market will serve, a change that will be most noticeable for borrowers of color. In 2019, 4.6 percent of conventional purchase and 2.5 percent of conventional refinance loans fell above the APOR + 150 bps thresholds currently proposed⁶. Black families, however, were over three times more likely than White families to fall above that threshold and Hispanic families were two and a half times more likely. Moreover, Latino homeowners have accounted for over half of the homeownership growth over the past decade and for over forty percent of household formations during that same period.⁷ These statistics suggest that setting the Safe Harbor threshold at APOR + 150 bps would not only continue to constrain access to credit generally, but also exacerbate the notable division in homeownership between White households and households of color.

Urban Institute data show that increasing the rate spread from 150 to 200 basis points only increases the incremental risk of default by an average of 2.2 percentage points.⁸ This slight increase in total default risk on a given book is minimal relative to the benefits derived, particularly for a traditionally underserved segment of the marketplace.

Another reason to adjust the Safe Harbor threshold is to align conventional and government lending pricing caps. Of note, the Safe Harbor rate spread calculation for Federal Housing Administration (“FHA”)-insured mortgages is different from the conventional loan methodology. In the conventional market, the annual percentage rate (“APR”) for a high loan-to-value (“LTV”) ratio mortgage includes the cost of private mortgage insurance (“MI”) as well as the higher fees assessed by the GSEs in the form of loan-level price adjustments

⁴ Signatories to this letter provide additional comments and suggestions on fair lending issues in their individual comments.

⁵ CFPB. *Data Point: 2019 Mortgage Market Activity and Trends*, page 52.

⁶ CFPB. *Data Point: 2019 Mortgage Market Activity and Trends*, page 52.

⁷ U.S. Census Bureau. (2020 January 30). Current Population Survey/Housing Vacancy Survey

⁸ Karan Kaul, Laurie Goodman, Jun Zhu, *CFPB’s Proposed QM Rule Will Responsibly Ease Credit Availability: Data show That It Can Go Further*, Urban Institute, Table 3, page 11 (September 2020).

("LLPAs"). The FHA Safe Harbor test, however, is set at a level that accommodates the FHA annual MI premiums, essentially excluding it from consideration.

As illustrated in the table below, the difference in how the Safe Harbor is determined will mean that the same borrower, with the same loan product, could have a Safe Harbor loan if the insurance is provided by FHA, but a Rebuttable Presumption loan if the insurance is provided by a private mortgage insurer on a GSE loan – even though the GSE loan could lower the monthly and lifetime cost for the borrower.

Loan Program	Conventional	FHA
Purchase Price	\$200,000	\$200,000
Loan Amount	\$190,000	\$190,000
Loan Amount (including FHA up-front MIP)	NA	\$193,325
LTV	95.00%	95.00%
FICO	700	700
DTI	40%	40%
Number of Borrowers	1	1
Loan Term	360	360
Occupancy	Primary	Primary
Loan Type	Fixed	Fixed
Loan Purpose	Purchase	Purchase
Base Int Rate	5.00%	5.00%
LLPA/Up front FHA MIP	1.00%	1.75%
Note Rate (includes LLPA / 5 year life)	5.25%	5.00%
MI Rate (Monthly BPMI-standard coverage)	0.78%	0.80%
Other Costs, Points, and Fees	0	0
APR	5.80%	5.98%
APOR	4.15%	4.15%
Spread	1.65%	1.83%
Allowable Spread	1.50%	1.95%
Safe Harbor	No	Yes

Monthly PMI Payment	Monthly FHA MIP Payment
\$123.50	\$126.67

Raising the Safe Harbor threshold to 200 bps would address this misalignment and potentially expand consumer choice among lenders and product offerings. In 2019, for example, there were approximately 3,200 Home Mortgage Disclosure Act ("HMDA") reporting lenders for conventional purchase loans versus approximately 1,200 reporting lenders for FHA purchase loans.⁹

The Overall QM Cap and Rebuttable Presumption

Some signatories to this letter recommend that the CFPB raise the overall QM cap to 300 bps over APOR, subjecting the incremental loans that fall over the Safe Harbor threshold to a Rebuttable Presumption.¹⁰ This would allow families that could only gain access to the mortgage market through these higher priced loans the ability to obtain QM product safeguards, though with more protections through the Rebuttable

⁹ *Id.*

¹⁰ While not all signatories to this letter would advocate for this change, none oppose CFPB consideration of this suggestion.

Presumption given the higher costs.¹¹ These creditworthy families would therefore not be pushed out of the QM channel altogether, an outcome that could result in fewer mortgage choices or higher cost products with risky features, which may adversely impact loan performance, or denial of access to credit.

Such a move would provide QM Rebuttable Presumption status to thousands of additional borrowers. These changes would benefit communities of color. For GSE loans, Black families were priced above 200 bps three times more often than Whites families, and Hispanic families twice as often. In the other conventional channel the disparities were greater, 2.5 and four times higher than White borrowers, respectively. And, data show that the rise in delinquency rates for loans between 200 and 300 basis points is modest: again, low enough to be worth avoiding this impact to families of color.

Treatment of Short-Reset Adjustable-Rate Mortgages

While suitable for some borrowers, short-reset ARMs can generate significant payment shock. To address this concern, the statute requires that QM loans be underwritten to the maximum possible interest rate permitted under the loan in the first five years. The proposed rule reinforces this mandate with a new and unique methodology for calculating the APR for all short-reset ARMs. This approach is operationally difficult and will render some safe and affordable ARMs to be ineligible for QM status.

We propose an alternative approach that would satisfy the intent of the proposed rule to establish a clear connection between the underwriting requirement for short-reset ARMs and a pricing mechanism to reinforce that requirement. In lieu of the APR calculation using the highest rate in the first five years, the Bureau should consider simply imposing a constraint on that maximum interest rate in the first five years, using a published data set to ensure an objective measure against which the rate would be compared. Generally, the highest rate in the first five years reflects a set of rate adjustments that are subject to a cap, which is historically 200 basis points for a 5-year ARM. Therefore, we believe and recommend that a sensible, yet conservative, cap for short-reset ARMs to be eligible for QM status is to restrict the maximum rate in the first five years to no more than 250 basis points (not adjusted for loan size) over the Average Initial Interest Rate (AIIR) for a comparable ARM loan, which the Bureau publishes on the FFIEC web site. Such a cap would be in addition to, and not a replacement for, the overall QM cap.

Recommendations

In order to ensure that the post-GSE Patch definition of the QM framework preserves broad access to sustainable credit and levels the playing field for private capital, we encourage the Bureau to:

- a) Strongly reiterate its commitment and obligation to ensure fair lending compliance and clearly state that a QM and/or Safe Harbor designation does not confer compliance or override non-compliance with the Fair Housing Act and/or Equal Credit Opportunity Act, or other consumer protection laws pertaining to mortgage lending.
- b) Increase the Safe Harbor threshold to 200 bps above APOR.
- c) Increase the QM cap to 300 bps over APOR.¹²

¹¹ For more detail, please refer to the QM comment submitted by Center for Responsible Lending et al.

¹² While not all signatories to this letter would advocate for this change, none oppose CFPB consideration of this suggestion.

- d) Modify the treatment of short-reset ARMs to permit the use of the standard APR with an alternative pricing cap, to serve as a control on payment shock and a means to protect the ongoing affordability of these mortgage products.

Thank you for the opportunity to provide feedback on the Bureau’s rulemaking on the General QM definition. The expiration of the GSE Patch and any changes to the broader QM framework will have significant implications for consumer access to affordable and sustainable mortgage credit. We welcome a constructive dialogue with the Bureau and reiterate our commitment to this robust comment process, to achieve a practical and effective future QM standard.

Sincerely:

