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July 31, 2017

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1275 First Street NE
Washington, DC 20002

Transmitted via: www.regulations.gov

RE: Docket No. CFPB-2017-0014

Dear Director Cordray:

On behalf of more than 1.2 million members of the National Association of REALTORS® (NAR) to comment on the June 1, 2017, request for information regarding Ability-to-Repay/Qualified Mortgage Rule (ATR/QM) assessment. NAR supports the overall objectives of the ATR/QM rule written to assure the continued availability of affordable mortgages for qualified consumers while obligating lenders to make good faith determinations that consumers will have the reasonable ability to repay the loan. As mentioned in NAR's previous comments, sound public policy that supports homeownership leads to stronger communities and social stability, all while driving the national economy. Though the country experienced great pains during the recession, as a nation we collectively learned that we are all responsible for ensuring prudent, sustainable lending standards.

The National Association of REALTORS® is America's largest trade association, including NAR's institutes, societies, and councils, involved in all aspects of the residential and commercial real estate industries. NAR's members are composed of residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of approximately 1,200 local associations/boards and 54 state and territory associations of REALTORS®.

Use of GSE Loan Eligibility to Qualify as a Qualified Mortgage

The final ATR/QM rule requires creditors to make a reasonable, good faith determination of a consumer's ability to repay their mortgage. For mortgages qualifying for QM status, creditors receive certain protections from liability in connection with their ability-to-repay determinations. One way to qualify as a QM is to (1) comply with prohibitions on certain risky features, (2) come within limits on points and fees, and (3) be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (the government sponsored enterprises, or GSEs). (while under conservatorship). This provision (or 'patch') simplifying qualification of QM status sunsets when the conservatorship ends and no later than January 10, 2021.[1]

The CFPB created this exemption to ensure the ongoing availability of mortgage credit while lenders transitioned their underwriting standards to meet the provisions in the final rule. By providing for most of the conventional market to continue to originate higher debt-to-income loans as QM loans, the CFPB has allowed the market to originate well-underwritten loans to responsible consumers.

EQUAL HOUSING OPPORTUNITY

[1] 12 CFR 1026.43(e)(4)(ii)(A).

As the CFPB examines the 'patch', and focuses on the 43% debt-to-income (DTI) threshold, NAR recommends that it assess data about the number of consumers loans purchased or guaranteed by the GSEs that exceed the DTI threshold. NAR continues to support and encourage innovation and responsible lending but, ultimately, we believe it is important to avoid constriction of credit to otherwise qualified borrowers. Therefore, careful consideration of available data and thoughtful analysis of anticipated market response is imperative prior to any recommendation that does not extend the expiration date of this provision.

Appendix Q, Standards for Determining Monthly Debt and Income

The large majority of NAR's members are self-employed independent contractors working in association with brokers, not as employees.[2] NAR continues to advocate for additional flexibility for creditors when establishing a self-employed consumer's earnings trend. It is critical that the availability of credit for self-employed borrowers is measured to assure that Appendix Q underwriting guideline aren't inadvertently leaving these borrowers with less options than salaried employees. The CFPB believes that there may exist a yet unspecified quantity of GSE or government-eligible loans that meet agency underwriting guidelines but do not meet Appendix Q requirements on documentation and calculation of income and debt. Assessing how many such loans exist and what characteristics made these loans ineligible, will provide insight on how to improve underwriting requirements while still maintaining consumer protection goals.

Points and Fees Definitions under the ATR/QM Rule

In order to meet ATR/QM rule safe harbor, the total points and fees payable in connection with a QM Loan must not exceed 3% for most loans. The CFPB indicates that it would conduct an analysis on how originations were impacted with respect to the points and fees threshold, for both jumbo loans and conforming loans because conforming loans also must satisfy the points and fees test in order to receive QM status. In addition to this assessment, we believe it is important that the CFPB consider consumers sentiments in working with affiliated companies and what impact the cap on points and fees has on their ability to use these services.

The National Association of REALTORS® commissioned a survey by Harris Poll in 2015 on consumer preferences for real estate services.[3] Originally conducted in 2008 and again in 2010, the third survey evaluated any changes in homebuyer preferences, especially given the improvement in the economy over the past several years. Surveying over 1,100 recent and future homebuyers online in September 2015, NAR discovered that availability, usage, and interest in "one-stop shopping" (OSS) had substantially increased. Fifty percent of buyers used one source to procure home-buying services, compared to 29 percent in 2008.

Perceptions of Mortgage Markets

The survey also included questions about the homebuyer's perception of the mortgage market. Forty-five percent of homebuyers believe it is easier for people with "good" credit to get mortgage approvals in 2015 than the prior year. Homebuyers in 2015 were three times as likely as 2010 buyers to say that OSS use makes getting a mortgage much more likely (16 percent in 2015, compared to 5 percent in 2010).

One-stop shopping has continued to gain popularity with buyers, and overall home-buying satisfaction levels are consistently higher among those who used OSS (average 8.3 on 0-10 scale) than those who used multiple sources (7.7). Nevertheless, notable portions of future buyers are still unsure about the home-buying process, and many are still uncertain how they will procure the home-buying services they plan to use in the next two years. Sizable portions of the future homebuyer population do not feel knowledgeable about real estate transactions (27 percent), are not confident in their ability to negotiate various aspects of the transaction (26 percent), and do not understand the roles played by service providers in real estate transactions (22 percent).

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[2] Nearly nine in ten NAR members are independent contractors, registering a median gross income from real estate activities of $42,500 last year. National Association of REALTORS® Research Division, 2017 Member Profile, (May 2017), https://www.nar.realtor/reports/member-profile.

[3] Nielsen, NAR, One Stop Shopping Survey Findings

As the CFPB executes its assessment plan, it is important that it consider all data that provides insights into consumer preferences and, in doing so, how the ATR/QM rule's cap on points and fees may remove preferred options with incremental, if any, benefit. Enhancing competition to allow for a wide array of options will enable consumers to choose the providers best suited for their needs without unfairly disadvantaging any segments of the market.

Conclusion

NAR commends your efforts to assess the impact of the ATR/QM rule on mortgage credit availability. Ensuring that the rule continues to promote responsible homeownership for consumers who otherwise would be unable to qualify for an affordable loan because their loan would not achieve QM status. NAR looks forward to continue working with the CFPB to educate consumers about the home buying process while supporting necessary consumer protection laws.

We would be pleased to discuss these issues and the state of the housing and mortgage markets in more detail at your convenience. If you have any questions, please contact Charlie Dawson, our Managing Director for Regulatory Policy and Industry Relations at CDawson@REALTORS.org or 202.383.7522.

Sincerely,

William E. Brown
2017 President, National Association of REALTORS®