

**Vince Malta**  
2020 President

**Bob Goldberg**  
Chief Executive Officer

## ADVOCACY GROUP

**Shannon McGahn**  
Chief Advocacy Officer  
Senior Vice President  
Government Affairs

**October 1, 2020**

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

**Docket No.:** CFPB-2020-0028

Submitted Via: <http://www.regulations.gov/>

Dear Director Kraninger:

On behalf of the nearly 1.4 million members of the National Association of REALTORS® (NAR), the following letter is in response to the Consumer Financial Protection Bureau's (CFPB) notice of proposed rulemaking (NPRM) on Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition. NAR has advocated for a reassessment of the general QM rule and improving liquidity where changes benefit consumers and maintaining safety and soundness of the system. REALTORS® agree that innovations, including the use of seasoning, may improve liquidity, but they should be done with care to avoid undue harm to consumers or destabilization of the market.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock and making it available to the widest range of potential homebuyers.

Homeownership is an integral part of the American Dream and the QM rule should be flexible enough to adapt to changing life patterns and not out of reach for individuals and families who lack traditional income documentation. Documenting the income of mainstream borrowers is relatively transparent, but the same chore is difficult for a growing number of borrowers in the gig economy and non-W2 earners. The majority of the 1.4 million members of the National Association of REALTORS® fall into this latter category. NAR previously commented on the general QM rule<sup>1</sup>, but continued efforts to refine the QM rule and provide for innovation such as this seasoning proposal will help toward these ends.

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<sup>1</sup> <https://narfocus.com/billdatabase/clientfiles/172/3/4142.pdf>



## **CFPB Proposes to Align Loan Performance with Ability to Repay**

The CFPB recently proposed changes to the market-wide QM rule. The proposed rule would continue the current ability to repay (ATR) foundation along with prohibitions on products and points and fees, but eliminate the hard, 43% debt-to-income ratio requirements. Furthermore, the proposal would maintain the 150 basis points over average prime offer pricing spread that defines a legal safe harbor loan and add a cap of 200 basis points for the legal rebuttable presumption of compliance.

In this NPRM, the CFPB seeks to add a new means for a mortgage loan to achieve the safe harbor status. Under the proposal, any loan that performs with no 60-day delinquencies and less than two 30-day delinquencies in the first three years, and remains on a lender's portfolio, achieves safe harbor status. The loan must be a fixed rate, first lien, fully amortizing loan with no balloon payment, a three-percentage point limit on risk product features, and limits on points and fees. Thus, a loan that is non-QM or rebuttable presumption at origination can see its legal standing improve dramatically after three years if it meets these criteria.

The CFPB's proposal draws parallels to the small lender QM rule, which allows for loans with certain product restrictions that are held in portfolio for three years by lenders who originate fewer than 2,000 mortgages annually to attain safe harbor status. If the loan is sold, it can only be sold to another lender who holds it in portfolio. In creating the rule, the CFPB reasoned that by holding the loan in portfolio for three years, the bank bears the risk of manufacture defect. This construct incentivizes lenders to align their underwriting to manufacture sound mortgage loans and will benefit consumers through greater liquidity.

## **Investors' Risk Drive Liquidity**

The CFPB notes that nearly "92 percent (of non-QM and rebuttable presumption loans) satisfied the performance criteria to qualify for Seasoned QM status under the proposal" and were still active after three years.<sup>2</sup> This analysis suggests that lenders respond to incentives to reduce manufacture risk. However, the CFPB did not segment this analysis by lender size or type and was unable to perform this analysis through a housing cycle. As Federal Reserve researchers have noted, the industry consolidated dramatically over the last two decades and larger lenders were more apt to reduce quality and receive government bailouts in the financial crisis. "Potential failure of these institutions was deemed a risk to the financial system and the economy—so they received guarantees, liquidity access and capital from the U.S. government."<sup>3</sup> Thus, requiring large lenders to hold loans in portfolio may not align incentives as too-big-to-fail banks could skirt rules. The CFPB should re-evaluate loan performance by market segment as more details become available and adjust the proposed rule accordingly.

As the CFPB notes, allowing for loans in bank portfolios to season into safe harbor status incents lenders to originate more of them, improving liquidity, as the value of the loan rises after the seasoning period. In a rising rate environment, as is expected over the next decade, the seasoning rule could spur lenders to originate more long-term mortgages. However, this trend depends on the willingness of investors in the secondary market to take these loans otherwise the credit risk will be concentrated in the portfolios of large banks.

Under the qualified residential mortgage rule (QRM), investors are responsible for the underwriting on the mortgage loans they purchase. As a result, some investors' demand for securitized loans remains limited in part because of the lack of trust of lender underwriting and securitization during the subprime crisis.<sup>4</sup> While the CFPB's analysis shows that early defaults due to manufacture risk are well confined to the first three years, a seasoning rule may encourage some lenders to originate loans that perform for just this period. The CFPB's product limitations help to minimize this risk. However, the assignee liability under the QRM, could limit the ability of lenders to unload seasoned QM loans due to risk aversion by investors. The CFPB should work with other regulators to reform assignee liability and build a mechanism that enables investors to put back loans or pools of loans with manufacture defects. This change would help to limit the potential ability of lenders to create mortgages with factors that raise the likelihood of default after seasoning, making these loans safe for consumers and more attractive to investors, thereby improving overall liquidity.

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<sup>2</sup> Consumer Financial Protection Bureau. "Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition" June 2020. 12 CFR Part 1026

<sup>3</sup> Dallas Federal Reserve. "Traditional Banks Pave the Way". 2012 annual report.

<sup>4</sup> Libby Cantrill, Mike Cudzil, Daniel H. Hyman, Kent Smith. "Housing Finance Reform: First Things First" PIMCO. July 18, 2017

## Relationship of Safe-harbor and Rebuttable-presumption QMs

In addition, the Bureau should only count points and fees paid directly by the consumer towards the calculation of points and fees under the three percent cap. The various structures under which originators are compensated reflect diversity and competition in the industry. Because compensation, reasonable profits, or cost of doing business under certain business models is more transparent than others, it should not lead to discrimination against those models.

As the consumers' advocate, the CFPB should consider consumers' sentiment in working with affiliated companies and the impact the three percent cap has on their ability to utilize such services. NAR commissioned surveys by Harris Poll in 2008, 2010, 2015, and 2019, on consumer preferences in real estate services, which revealed that availability, interest, and usage in "one-stop shopping" (OSS) had increased significantly over the last decade. Nearly fifty percent of buyers used a single source to procure home-buying services in 2019, compared to 29 percent in 2008. As one-stop shopping gained popularity with buyers, so did users' overall satisfaction levels with those OSS services (average of 8.4 on a scale of 0 to 10) compared to those who used multiple sources (8.0).<sup>5</sup>

Limiting competition by way of the current three percent cap on points and fees will only reduce service and access to credit while raising search time and monetary costs for consumers.

## Conclusion

Underwriting is the foundation upon which the housing finance system rests. The CFPB's proposed rule for loan seasoning is a promising step to improve access for borrowers who may not fit the safe harbor definition, while maintaining market stability. The rule can be improved by adjusting the points and fees limit, fixing the QRM rule, and adding monitoring for large-bank practices. NAR appreciates the opportunity to provide input and looks forward to continuing to work together on these important issues. If you have any questions, please contact me or NAR Senior Policy Representative, Ken Fears, at 202-383-1066 or [KFears@REALTORS.org](mailto:KFears@REALTORS.org)

Sincerely



Vince Malta

2020 President, National Association of REALTORS®

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<sup>5</sup> <https://narfocus.com/billdatabase/clientfiles/172/25/2950.pdf>, 2019 survey post pending