

September 16, 2019

Ms. Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

RE: Advance Notice of Proposed Rulemaking – Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z) [84 FR 37155, Docket No. CFPB-2019-0039]

Dear Ms. Kraninger:

Thank you for the opportunity to provide comment on the Advance Notice of Proposed Rulemaking regarding changes to the definition of Qualified Mortgages (QM) under the Truth in Lending Act. Please note that these comments have not been submitted to or approved by NeighborWorks America's board and do not necessarily represent the views of its board members, either collectively or as individuals.

For over 40 years, Neighborhood Reinvestment Corp. (d/b/a NeighborWorks America), a Congressionally-chartered, national, nonpartisan nonprofit, has created opportunities for people to improve their lives and strengthen their communities by promoting and facilitating sustainable homeownership. The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Truth in Lending Act to “assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and fair.” NeighborWorks America strongly supports the spirit of the Ability to Repay rule and the CFPB's focus on protecting consumers against predatory loans.

NeighborWorks America and our network of nonprofit organizations are deeply engaged in homeownership education and promotion, lending, and portfolio management. Ensuring that the communities we serve retain access to safe, responsible mortgage capital is a key priority in this work. In FY 2018, NeighborWorks network organizations originated over 11,500 mortgages, with a total loan volume of over \$386 million. Additionally, network organizations provided housing counseling and homebuyer education services to nearly 178,000 households. Given that the low- and moderate-income households that make up the majority of the NeighborWorks network's customer base are the most likely to be impacted by the changes to QM designations for high DTI loans, NeighborWorks and the NeighborWorks network clearly have a vested interest in ensuring that any changes to the regulations adequately serve and protect these communities.

The ANPR asks a series of questions about the “GSE patch,” the temporary provision in the regulations that allowed high-DTI loans eligible for purchase by Fannie Mae and Freddie Mac to receive QM designation. This “temporary QM” designation has created a viable secondary market for these loans and has created access to affordable credit where it otherwise may not have existed. As a result, NeighborWorks is concerned that changes to the GSE patch, and overall QM definition,

could have dramatic impacts on the availability of mortgage credit in the marketplace, particularly for lower-income homebuyers.

Presently, the QM designation represents a critical safe harbor for lenders, giving certainty to compliance and lowering litigation risk and thereby increasing the availability of credit. The ability of the GSEs to provide a robust secondary market, including for loans with debt-to-income (DTI) ratios above 43%, is also key to ensuring that credit remains available. According to the analysis contained within the ANPR, 16% of the total first-lien mortgages originated in 2018 were covered by the Temporary GSE QM loan provision. If the GSE patch is allowed to expire, these loans would no longer be eligible for QM. When publishing the regulations, the CFPB anticipated that the private mortgage market would grow in the non-QM space, an outcome that has not materialized as lenders remain wary of the uncertainty about compliance and the associated legal risks.

Measures of a Consumer's Personal Finances

At its inception, the temporary GSE patch was intended to help ensure that consumers with DTI ratios above 43% had access to safe credit products, although the CFPB acknowledges that even at the time the regulations were crafted, the CFPB did not believe that 43% DTI was the “outer boundary of responsible lending.” Historically, DTI, which is often poorly measured, has been only a weak predictor of loan performance.¹ As such, NeighborWorks recommends a less prescriptive approach based on a loan's overall riskiness rather than a rigid percentage-based DTI threshold. The Ability to Repay rule, which directs lenders to determine and verify a range of factors including a consumer's credit history, current and expected income, current obligations, employment status, and other financial resources, provides a holistic framework for making credit decisions.

NeighborWorks recommends that a specific DTI threshold be removed from the QM definition in Regulation Z. Instead, the definition should be revised to provide a presumption of compliance based on a rate-spread approach, comparing a loan's pricing to the Average Prime Offering Rate (APOR). Offering safe harbors for prime and near-prime loans would have several advantages. This approach would level the playing field between the private sector and the GSEs by removing the special protections afforded to agency-eligible mortgages. In turn, this could encourage growth in the non-GSE lending space. Second, a rate spread-based approach could incentivize innovation in the technologies and techniques used to determine and verify a borrower's ability to repay, enhancing accuracy and predictability in mortgage lending.

At the same time, NeighborWorks affirms the importance of consumer protections and safeguards to prevent the unsustainable lending of past eras from returning while maintaining access to safe, responsible credit products for the LMI borrowers and communities that the NeighborWorks network serves.

Additional Information

The ANPR requests information about the timeframe that would be needed in order to allow for the market to transition to the new rules. While NeighborWorks does not have a specific answer to this question, we encourage the CFPB to consider the timeframe for software companies to update their products and provide training on the new version, as these technical limitations will drive many lenders' ability to maintain compliance with the revised regulations. Additionally, we encourage the CFPB to extend the “GSE patch” for a period sufficient to create a transition period long enough to

ensure development of robust market products that will facilitate originations of low- to moderate-income mortgage.

While not directly implicated in the ANPR, NeighborWorks also wishes to explicitly endorse the continued exemption for Community Development Financial Institutions (CDFIs) from the ATR rules. CDFIs are, as required by their Treasury-issued certifications, inherently mission-oriented lenders. These institutions often serve individuals and communities that are not—and sometimes cannot be—served by the general market. In order to be able to meet the credit needs of their customers, CDFIs require additional flexibilities. These flexibilities can appropriately be afforded to these institutions given the built-in consumer protections that derive from their mission-driven nature.

Finally, we respectfully request an extension of the 45-day comment period, recognizing that the short timeframe has been inadequate to allow for us to sufficiently consult with our network organizations and provide thorough feedback in response to the ANPR's questions. We have heard from other colleagues in the field that they, too, believe that this timeframe has not allowed for their full participation in this process. While we understand the CFPB's desire to conclude the rulemaking process in advance of the January 2021 expiration of the GSE patch, we do not believe that a compressed process is in the public's best interest. Instead, we recommend a short-term extension of the patch with no modifications if additional time is needed. We value the opportunity to engage with the CFPB as it charts the future course of these regulations, and we urge you to consider an extension of the comment period to allow for more robust input from stakeholders.

Conclusion

As evidenced by the lack of market for non-QM lending, it is clear that lenders view the legal risks of non-QM lending as a significant deterrent to providing loans outside of the QM safe harbor. Put simply, NeighborWorks is concerned that lenders' risk tolerance will not allow them to support a healthy credit market in the face of the substantial legal uncertainties associated with non-QM loans. As a result, it is essential that the CFPB appropriately alter the QM definition in order to maintain affordable access to responsible credit, particularly for low- and moderate-income communities.

Sincerely,



Kirsten Johnson-Obey
SVP, Public Policy and Legislative Affairs

¹ Kaul, K., & Goodman, L. (2018, October). Updated: What, If Anything, Should Replace the QM GSE Patch. Retrieved from https://www.urban.org/sites/default/files/publication/99268/2018_10_30_qualified_mortgage_rule_update_finalized_4.pdf