NCSHA

September 8, 2020

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

Attention: CFPB Proposed Rule on Qualified Mortgage Definition Under the Truth in Lending Act; Docket No. CFPB-2020-0020

Dear Director Kraninger:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA)[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's (CFPB) proposed rule on the Qualified Mortgage Definition under the Truth in Lending Act (CFPB-2020-0020).

NCSHA commends CFPB for working to update the Ability-to-Repay Qualified Mortgage Rule (ATR-QM) to ensure it fits today's mortgage market, particularly in light of the impending expiration of the Government-Sponsored Enterprise (GSE) Patch.[2] In general, we believe the proposed rule strikes a solid balance between protecting consumers, fostering access to mortgage credit for all borrowers—including low-and moderate-income households—and establishing regulatory certainty.

We strongly support the Bureau's proposal to eliminate the maximum borrower debt-to-income (DTI) ratio of 43 percent mortgages must meet to satisfy the definition of "Qualified Mortgage" (and qualify for the legal protection the definition confers). Rescinding the DTI ratio will allow many creditworthy working families to qualify for mortgage credit without lowering consumer protections.

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[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

[2] The "GSE Patch" refers to a provision in the ATR-QM that defines any loan approved through either Fannie Mae's or Freddie Mac's automated underwriting systems (Desktop Underwriter or Loan Prospector) as a Qualified Mortgage. The Patch is currently set to expire on January 10, 2021, though CFPB has proposed in a separate rulemaking to extend the Patch until any changes to the ATR/QM Rule are finalized.

NCSHA also appreciates that the proposed rule's new price-based threshold for meeting the QM standards is clear and easy to implement. We urge CFPB, when finalizing the rule, to analyze how the proposed thresholds will impact liquidity in the housing market, monitor the effects of the thresholds once the rule is implemented, and adjust them if called for. Lastly, we support CFPB's proposal to delay the expiration of the GSE Patch until the proposed rule is finalized.

**State Housing Finance Agencies' Affordable Homeownership Programs**

Even as the national homeownership rate has risen slightly after a long decline, the American Dream remains elusive for growing numbers of younger households, working families, and people of color. These are the households state HFAs serve.

State HFAs provided more than $27 billion in loan financing to help more than 156,000 households become homeowners in 2018, with 30 percent of these loans helping minority buyers. The median state HFA-assisted homeowner's income in 2018 was $57,039, ten percent below the national median income. Their average home price was $171,074, nearly 35 percent below the national median home sale price.

HFAs have proven over decades that affordable lending, when done right, is also responsible lending. HFAs do it right in the case of first-time homebuyer lending through a time-tested combination of low-cost financing; traditional fixed-rate, long-term products; flexible, but prudent, underwriting with careful credit evaluation; diligent loan documentation and income verification; down payment and closing cost assistance; homeownership counseling; and proactive servicing.

A 2018 study of more than one million low- and moderate-income mortgages found that single-family loans originated through state HFA programs perform better than similar non-HFA loans to low- and moderate- income borrowers. Overall, HFA loans were 20 percent less likely to experience a long-term default. They were also 20–30 percent less likely to be foreclosed.

According to the report: "Not only are HFAs more likely to require full documentation and careful underwriting, they also serve as a third-party monitor on the partner lenders originating loans through the state program, creating an additional incentive for careful screening by the lender."[3]

CFPB noted the important role HFAs play in serving underserved borrowers when it exempted all loans originated through HFAs from the ATR-QM rule's requirements. The Bureau found that because "HFAs extend credit to promote long-term housing stability, rather than for profit, HFAs generally extend credit after performing a complex and lengthy analysis of a consumer's ability to repay." Consequently, CFPB determined that "applying the more generalized statutory ability-to-repay requirements would provide little or no net benefit to consumers and instead could be unnecessarily burdensome by diverting the focus of HFAs and their private creditor partners from mission activities to managing compliance and

[3] "Low Income Homeownership and the Role of State Subsidies: A Comparative Analysis of Mortgage Outcomes," Moulton, Record, and Hembre, 2018, Fannie Mae.

legal risk from two overlapping sets of underwriting requirements." We urge CFPB to maintain this exemption.

### Finalize Rescission of the DTI Threshold to Maintain Access to Credit

As noted above, NCSHA supports CFPB's proposal to rescind from the ATR/QM rule the maximum DTI ratio of 43 percent for QM loans. As we argued in our comments to CFPB's 2019 Advance Notice of Proposed Rulemaking (ANPR) on the ATR/QM Rule, a one-size-fits-all DTI ratio that applies to all borrowers, without considering other factors, will reduce homebuying opportunities to responsible households that earn lower incomes.

Because of the GSE Patch, the impact of the DTI threshold on access to credit has been muted, but there is ample evidence demonstrating the DTI limit could substantially reduce access to credit once the Patch expires next year. According to an analysis conducted by the Urban Institute, nearly 3.3 million loans originated between the beginning of 2014 and the end of 2018 qualified as QM because of the GSE Patch, accounting for nearly one-fifth of Fannie Mae and Freddie Mac's guaranteed loans during that time period.[4] CoreLogic estimates that roughly $260 billion of 2018 total mortgage loan origination volume met the QM definition solely due to the GSE Patch.[5]

Many of these loans may not have been made without the GSE Patch. This includes many of the loans state HFAs have originated in recent years through preferred single-family partnerships with Fannie Mae and Freddie Mac. Both Fannie Mae and Freddie Mac offer HFAs and their borrowers exclusive products with special pricing and terms, in recognition of HFAs' strong performance. NCSHA estimates 33 – 40 percent of HFA loans would not have qualified as QMs if the DTI limit had been applied.

While HFA loans are currently exempt from the ATR-QM rule, these loans account for a small share of Fannie Mae and Freddie Mac's total production each year. Though it is very likely the GSEs and other HFA partners will modify their underwriting standards to prevent approving any loans not meeting the QM definition to avoid potential liability, it is possible many might not adjust their systems to account for the HFA exemption.

Rescinding the 43 percent DTI limit is especially important to encourage lenders to meet the needs of underserved borrowers, including minorities and those with low- or moderate-incomes. One of the main impediments such borrowers have traditionally faced when trying to obtain a mortgage to purchase a home is accumulating the cash necessary to pay for a down payment. The DTI limit would make securing a mortgage even more difficult for these families. At the same time, analysts predict that minority borrowers will make up an increasing share of new households in the future, making addressing their needs vital to the health of the housing market.

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[4] Goodman, Laurie, "New Data Confirm the Urgency of Addressing the Expiration of the GSE Patch," Urban Institute, March 25, 2019.

[5] Carroll, Pete, "Expiration of the CFPB's Qualified Mortgage 'GSE Patch' – Part 1: GSE Patch accounted for an estimated $260 billion, or 16%, of 2018 home loan originations," CoreLogic, July 11, 2019.

Eliminating the DTI threshold will not impact the CFPB's ability to protect consumers nor open the door for more unsafe lending, as some might argue. On its own, the DTI ratio is a weak measure of a borrower's risk and ability to repay their loan. Rather, DTI is typically considered along with a range of underwriting factors. Maintaining a one-size-fits-all maximum DTI ratio for all borrowers, regardless of any other variables, will deny mortgages to many creditworthy families.

## Ensure New Pricing Thresholds Do Not Unduly Limit Affordable Homeownership

The proposed rule also creates new price-based thresholds loans must meet to qualify as QMs. Specifically, the rule would stipulate QM loans must have an annual percentage rate (APR) less than two percent higher than the average prime offer rate (APOR) for the market. The proposed rule would create a larger APR differential for smaller mortgages and subordinate liens.

NCSHA appreciates the intent behind these criteria, which would establish "bright line" standards that are easy for originators to understand and ease compliance. At the same time, the thresholds could reduce access to credit if lenders find they cannot cover their costs or sustain loan products at or below the stipulated thresholds.

It is critical that the Bureau assess the impacts of the thresholds on the availability of affordable mortgage credit for low- and moderate-income and underserved borrowers before adopting them. The Bureau should publish the analysis and the final rule should provide necessary flexibility in implementing the thresholds for loans serving low- and moderate-income borrowers and households of color. CFPB should also monitor the impact of the price-based thresholds after the rule is finalized and adjust them accordingly to reflect market developments.

## Maintain the GSE Patch Until the Final Rule Is Implemented

In a separate proposed rulemaking (CFPB-2020-0021) published concurrently with the proposed rule, CFPB proposes to extend the GSE Patch, currently set to expire on January 10, 2021, so it remains in effect until the proposed rule is finalized and implemented.

NCSHA supports keeping the Patch in effect until the ATM rule is finalized to give HFAs, lenders, and other industry participants ample time to adjust to the new standards and to avoid an interim period where working families are unable to buy homes because of the 43 percent DTI maximum.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives