NCSHA

September 16, 2019

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

Attention: CFPB ANPR on Qualified Mortgage Definition Under the Truth in Lending Act; RIN 3170-AA98

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) Advance Notice of Proposed Rulemaking (ANPR) on the Qualified Mortgage Definition under the Truth in Lending Act. NCSHA commends CFPB for reassessing the Ability-to-Repay/Qualified Mortgage Rule (ATR-QM) and its impact on the lending market as the expiration date for the Government-Sponsored Enterprise (GSE) Patch nears[2].

NCSHA believes that, in general, the current ATR-QM regime establishes a solid framework for protecting consumers while still allowing for flexible loan underwriting to meet the diverse needs of consumers. However, the expiration of the GSE Patch would upset this balance by effectively requiring all loans to have a borrower debt-to-income (DT) ratio of no higher than 43 percent in order to meet the definition of "Qualified Mortgage" (QM) and qualify for the legal protections the definition confers. This will greatly curtail lending to many creditworthy borrowers, particularly low- and moderate-income families, while offering little in the way of consumer protection. Consequently, NCSHA joins lenders, industry associations, and civil rights advocates[3] in asking CFPB to rescind the 43 percent DTI threshold and the related Appendix Q, while retaining the other standards in the ATR-QM Rule.

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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 or Freddie Mac's automated underwriting systems (Desktop Underwriter or Loan Prospector) as a Qualified Mortgage. The Patch is set to expire on January 10, 2021.

[3] QM Coalition, letter to CFPB Director Kathleen Kraninger, September 9, 2019. NCSHA signed onto this letter.

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 that state HFAs exist to serve.

State HFAs provided more than $28 billion in loan financing to help more than 150,000 households become homeowners in 2017, with more than one quarter of these loans helping minority buyers. Around 40 percent were purchased and securitized by Fannie Mae and Freddie Mac.

The median state HFA-assisted homeowner's income in 2017 was $52,115 (15 percent below the national median income) and their average home price was $166,525 (13 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."[4]

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.

Eliminate the DTI Threshold to Maintain Access to Credit

Since the ATR-QM rule went into effect in 2014, QM loans have made up the vast majority of single-family purchase loans, as lenders have sought the safe harbor legal protection such loans offer. While non-QM lending has increased slightly in recent years, it is expected to remain a tiny fraction of overall originations. Consequently, any changes to the QM definition are likely to

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

have a substantial impact on access to credit, especially to low- and moderate-income borrowers and other underserved populations.

Because of the GSE Patch, lenders have been able to originate many QM loans in recent years that otherwise would not have qualified. According to an analysis conducted by the Urban Institute, nearly 3.3 million loans over the past five years have 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.[5] CoreLogic estimates that roughly $260 billion of 2018 total mortgage loan origination volume met the QM definition solely due to the GSE Patch.[6]

Many of these loans may not have been made without the GSE Patch. Similarly, many of the loans state HFAs have originated in recent years through preferred single-family partnerships with Fannie Mae and Freddie Mac would not have been possible had the GSE Patch not been in effect, because of DTI ratios that exceeded the limit that would have applied otherwise. Both Fannie Mae and Freddie Mac offer HFA exclusive products with special pricing and terms, in recognition of HFA loans' strong performance. While NCSHA was, regrettably, unable to conduct a comprehensive analysis, based on our conversations with HFAs, we believe between a third and 40 percent of such loans would not qualify as QMs if the DTI limit were applied.

While HFA loans are currently exempt from the ATR-QM rule, they account for a small share of total single-family loan production each year. Consequently, it is very likely that the GSEs and other HFA partners would simply adjust their underwriting standards so that they do not approve or underwrite any loans with a DTI above 43 percent, to avoid any possible liability.

With the GSE Patch set to expire in 2021, we believe rescinding the DTI ratio limit is necessary to ensure affordable homeownership opportunities remain available for future homebuyers. This is especially important if the QM market is going 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 purchase a home is accumulating the wealth needed to pay for a down payment. The DTI limit would make this even more difficult. At the same time, minority borrowers are expected to make up an increasing share of new households in the future, making them vital to the future of the housing market and addressing their homebuying challenges key to their financial prospects and general well-being.

Eliminating the DTI threshold would not impact CFPB's ability to protect consumers, nor would it open the door for more unsafe lending. On its own, the DTI ratio is generally considered to be 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

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

[6] 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,

DTI ratio for all borrowers, regardless of any other variables, will simply serve to deny credit to many creditworthy families.

If CFPB were to eliminate the DTI limit, all the other QM criteria, as well as the requirement that lenders take steps to evaluate a borrower's ability to repay the loan, would remain. In fact, NCSHA urges CFPB to keep the rest of the ATR-QM rule in place as is to preserve its protections. Further, unlike other QM criteria, the DTI limit was not explicitly prescribed by Congress. Dodd-Frank gave CFPB the authority to consider establishing a maximum DTI, but it was not required.

In sum, NCSHA strongly recommends that CFPB rescind the current 43 percent maximum DTI limit to allow the housing market to meet the needs of future homebuyers, particular those from underserved communities.

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

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives