



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

Re: Docket No. CFPB-2019-0039; RIN 3170-AA98; Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z)

https://files.consumerfinance.gov/f/documents/cfpb_anpr_qualified-mortgage-definition-truth-in-lending-act-reg-z.pdf

Dear Director Kraninger:

The Structured Finance Association (“SFA”) thanks the Consumer Financial Protection Bureau (“CFPB”) for the opportunity to provide our initial observations to the CFPB’s Advanced Notice of Proposed Rulemaking (“ANPR”) on potential policy approaches to the January 1, 2021 expiration of the so-called “GSE Patch,” which presently is an important component of the definition of a “Qualified Mortgage” (or “QM”).

I. INTRODUCTION TO SFA

SFA represents over 360 members from all sectors of the securitization market, and our core mission is to support a robust and liquid securitization market. SFA provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. This response is submitted on behalf of SFA’s QM Task Force, which is open to all interested SFA members, and is comprised of firms involved at every stage of the loan origination and securitization process in both the QM and non-QM markets. The views expressed in this letter represent a consolidated set of comments from across the industry, and they do not reflect specifically the viewpoint of any single member.

Over the course of the past few months, SFA staff have been actively engaging with and seeking input from our members who have interest in this issue. This interest arises in part because of the existence of a steadily growing market over the past few years for securitization of jumbo QM and non-QM loans. In addition to these discussions within SFA’s committees and the above referenced QM Task Force, this consolidated set of comments is derived from two other key components.

First, the SFA created a survey designed to elicit responses from its members across the securitization industry. Surveys such as this are often utilized by our organization to gauge broad market views. This survey covers issues and considerations within the current QM and non-QM markets and informs SFA’s perspectives regarding the CFPB’s potential approach to the expiration of the GSE Patch. The results of this survey are attached to this letter.

Second, in addition to the survey, SFA convened a QM Symposium in June of this year, bringing together regulators, policymakers, issuers, investors, law firms, housing and community advocates, rating agencies, diligence firms, and data and analytic providers to discuss the ATR-QM rule and the implications of the expiration of the GSE Patch. The results of this survey are attached to this letter as Appendix A.

II. BACKGROUND

The CFPB’s effort to revisit the original regulatory definition of a Qualified Mortgage is consistent with the ongoing public policy deliberations that underlay the predecessor bills passed by the House of Representatives in 2007 and 2009 to address concerns about unsafe and irresponsible lending, which ultimately formed the foundation for many of the consumer protections built into the present Dodd-Frank-Act (“DFA”), including the DFA’s “ability to repay” requirements. For over a decade, policy makers have debated the layers of risk factors that resulted in, or at least contributed to, the origination of unaffordable loans and what prohibitions of or limits on such risk factors should apply prospectively to avoid future melt-downs arising out of imprudent residential mortgage lending. The resulting statutory and regulatory definitions of Qualified Mortgage reflect a view that the risk of default because of the borrower’s inability to afford a loan should be viewed holistically in terms of loan product types and features, verification of income and assets, upfront total points and fees, and underwriting standards based on a direct review of a consumer’s personal finances.

The CFPB’s ANPR focuses on this last factor – underwriting – particularly as the CFPB contemplates the replacement of GSE underwriting standards and the continued usefulness of the conventional, non-conforming underwriting standard previously promulgated by the CFPB based on a 43% debt-to-income (“DTI”) ceiling and adherence to the standards set forth in Appendix Q. The questions posed by the CFPB in the ANPR essentially reiterate the continuing policy debate of whether underwriting standards should:

- be required at all for a Qualified Mortgage if the other elements of the definition are satisfied; and
- if so:
 - be limited to higher priced loans that may present a greater risk of consumer vulnerability;
 - consist of prescribed standards that are substantially similar to existing requirements or those that modify, supplement or replace the existing standards; and
 - provide a conclusive or rebuttable presumption of compliance.

III. SFA'S RESPONSE

As a threshold matter, we applaud the thoughtful questions posed by the CFPB in seeking to structure a proposed regulation. The ANPR highlights many of the various permutations and combinations of potential underwriting requirements for a Qualified Mortgage and the presumptions of compliance that flow from such requirements. In responding to the ANPR, SFA has decided to take a thematic and principles-based approach rather than attempting to answer each of the questions posed by the CFPB.

The SFA survey indicates certain areas of consensus that we discuss in detail below. Furthermore, in the weeks and months to come, SFA will work to build further consensus on specific recommendations, prior to the CFPB issuing a notice of proposed rulemaking. In evaluating a proposed response to the CFPB's ANPR, SFA and its members are mindful of the relevance and legal consequence of characterizing a residential mortgage loan as a Qualified Mortgage—namely, whether a borrower is precluded from raising a defense to foreclosure based on the lender's alleged failure to satisfy statutory "ability to repay" requirements, although a borrower always may challenge whether a loan meets the requirements for a Qualified Mortgage.¹

Very broadly, as reflected in both the attached survey results and our ongoing work, SFA has identified some initial general themes.

¹ The definition of QM also is relevant in the context of the exception from risk retention rules in private securitizations for "Qualified Residential Mortgages," which presently is based on the QM definition.

Support of Twin Goals: Consumer Protection and Expansion of Responsible Credit

SFA members are absolutely committed to the underlying purpose of the ATR to protect borrowers from unaffordable loans, but, at the same time, they want to expand access to responsible credit for credit-worthy borrowers. We believe that these twin goals are complementary and not mutually exclusive. Any solution should be considered in the context of “guardrails” not “blocked pathways.” In other words, our members believe that overly prescriptive prohibitions or requirements in the name of consumer protection, especially where there is a lack of surrounding clarity on what exactly is prohibited or required, may have the undesirable result of reducing good faith, responsible lending, over concern about the risks of potential legal challenges.

QM Must Continue to Exclude Certain Product Features

Members also are aligned that a Qualified Mortgage should continue to exclude the existing limits on product types and product features. These important exclusions, which appear both in the statute and the CFPB regulations, are objective and easy to apply in practice. Specificity wrings out excess costs, propels an efficient market and ultimately lowers prices to consumers, and the product features and restrictions currently in place are emblematic of the kinds of specific and clear ATR-QM guardrails that the CFPB is well-positioned to promulgate and enforce.

A Robust Mortgage Market Includes QM “Safe Harbor”, QM “Rebuttable Presumption”, and non-QM Market Spaces

A final rule, our members believe, also should make clear there is room for vibrant, responsible lending in each of the QM “Safe Harbor,” QM “Rebuttable Presumption,” and non-QM market spaces, without any unintended negative implication or inference that non-QM loans necessarily are the new form of irresponsible sub-prime lending.² Responsible non-QM lending should be facilitated and encouraged, not subject to uncertainty that dissuade responsible lenders and investors from actively participating in this market. Detailing minimum standards for acceptable forms of third party records for documenting income and financial resources would be one important way for the CFPB to meet this objective.

² Moreover, as an example of unintended negative implications, some members noted the negative perception around the term “non-QM”, which is sometimes incorrectly conflated with subprime or Alt-A loans and, as a result, discourages active industry participation. Read literally, the term non-QM could be interpreted to mean a loan without quality, which of course is inconsistent with the policy goal of encouraging alternative, vibrant sub-markets for residential mortgage lending. There was some discussion about the changing the term “non-QM” to something that helps address that confusion and speaks to the actual composition of loans in the current non-QM market.

One of the take-aways from SFA's QM Symposium was that many industry participants are convinced that an over reliance on DTI ratios as an underwriting yardstick unintentionally limits credit availability for a substantial population of credit-worthy borrowers. An important aspect of any re-formation of the QM Rule should address these unintentionally underserved borrowers by legitimizing both additional approaches to assessing credit-worthiness as well as complementary lending channels servicing different borrower profiles.

Such enhancement ultimately rests on the private sector--particularly the private loan securitization market--to provide funding for the conventional, non-conforming loan market, such as non-QM loans. Nevertheless, investor feedback has suggested that one path-blocking barrier to credit availability is the significant expansion of assignee liability for lenders and securitizations to mortgage originations' activity, under both QM rebuttable presumption loans and non-QM, which may be a risk that passive secondary-market loan investors and non-Agency RMBS investors are unable or unwilling to accept. There can be no assignee liability without primary liability, and efforts to bring certainty into the compliance analysis at least will help. We encourage the CFPB to think about the feasibility of addressing this important issue to the secondary market.

One way to limit assignee liability perhaps worth exploring is the possibility of allowing non-QM loans to achieve safe harbor status following a clean 24 or 36 month seasoning. Such designation presumably would have appropriate limitations and parameters that would have to be considered and evaluated, including limiting to fixed rate loans, as well as the assurance that such a policy would enhance, not detract, from liquidity.

QM Patch Should Be Eliminated

SFA members overwhelmingly support the elimination of the "GSE Patch," which they believe exacerbates the GSEs' unfair advantage for loans above a 43% DTI ratio. The regulatory framework should be structured in such a way as to provide consistent rules for all market participants across segments to ensure that the GSEs are not granted preferences additional to their structural market advantage over private participants.

In looking at replacements, it is useful for the CFPB both to examine what we believe worked and did not work in the underlying construct of the GSE Patch and to consider addressing the elements of what worked in a proposed rule.

- What did work:
 - An empirically validated, standard underwriting model that adequately yet responsibly served higher DTI and non-W-2 borrowers in the QM space. (approximately \$300 billion in annual volume for the GSE Patch).
 - An automated “decisioning” engine (AUS) that allowed for lenders to obtain QM safe harbor eligibility for their loans.
 - Having the AUS be dynamically updated on a regular basis.

- What did not work:
 - GSEs’ ability to define their own QM underwriting criteria at the expense of private market participants.
 - The “black box” nature of that criteria embedded in the GSEs’ Automated Underwriting Systems.
 - The ability of the GSEs to make changes to that “black box” content without going through notice and comment.

One area SFA members are currently spending considerable time evaluating is the merits of including a dynamic underwriting model and automated engine that includes up-front and regular industry input and feedback.

A safe harbor of compliance with ATR requirements—in the form of a classification of a loan as a QM—should exist for a subset of loans where the originator determined the borrower’s ability to repay in good faith. SFA members believe loans above a 43% DTI can be made responsibly (and be QM) but have different views on how to use compensating factors.

At this point, while some SFA members are open to the idea of eliminating CFPB-issued underwriting requirements to determine QM, the majority of our members generally support the CFPB-issuing some guidelines on underwriting requirements for a QM loan. Most Members presently do not believe that underwriting requirements for a QM loan should apply only to higher priced loans. Moreover, eliminating the QM Patch without replacing or updating the alternative underwriting standard within the QM standard is believed to be insufficient.

If Appendix Q remains, members want the CFPB to recognize that Appendix Q, as currently constructed, leaves many high-quality borrowers, particularly those who do not receive a traditional IRS W-2 form as a full-time employee, likely outside the definition of a QM. With 36% of U.S. workers participating in the gig economy either through their primary or secondary jobs

and nearly 40% of the American workforce now making at least 40% of their income through gig work, it is important for the CFPB to address these shortcomings with the existing Appendix Q.³

Improving Appendix Q and Providing Market Needed Clarity

In contrast with clarity and certainty on restrictions of product types and features, standards around income documentation and verification suffer from a degree of subjectivity and a lack of clarity, owing largely to shortcomings in Appendix Q. Our membership discussions have focused on the appropriate ongoing roles of the CFPB, individual lenders or investors and neutral standard-setting organizations to establish, validate, approve, supervise, and examine eligible underwriting alternatives and documentation standards that may be contained in an improved Appendix Q. As the survey results indicate, while members generally want the CFPB to be actively involved in the establishment of underwriting standards, there is also a wariness of the government setting a national underwriting standard. Notwithstanding this tension, feedback from our members also suggests that the means exist to have the necessary degree of clarity and certainty, coupled with an increased measure of dynamism and innovation within the QM market.

While, as noted above, there is overwhelming consensus among members to phase out or eliminate the GSE Patch to help foster the growth of the private market, members recognize that careful consideration must be taken when weaning the market from the GSE Patch and any other regulatory changes made to the definition of a QM to avoid any undesirable market consequences, such as increasing the cost or reducing the liquidity and even availability of fairly priced loans. As the CFPB has itself noted, more time may ultimately be needed to ensure a smooth transition away from the market's reliance on the GSE's AUS, but SFA strongly believes that such a transition can and should occur.

IV. CONCLUSION

We believe that the varying views expressed by SFA members speaks to the complexity of this rule, as well as the necessity of striking the appropriate balance between competing rationales embedded within the rule. However, SFA members genuinely want to ensure the availability of affordable and accessible credit. We believe that there is a path forward for the CFPB to perform its statutory obligation in protecting consumers from loans that they cannot afford, while also creating a framework where lenders and investors can make loans to a wide variety of borrowers, leveraging technology and innovation in a dynamic manner in a way that benefits all stakeholders in the mortgage market. We view this ANPR process as an important first step in what will likely

³ See studies at: <https://www.gallup.com/workplace/240929/workplace-leaders-learn-real-gig-economy.aspx> and <https://www.pymnts.com/gig-economy/2018/freelance-workerspayments-online-marketplace-hyperwallet/>

be a careful and thorough process. As the stakes are very high, we intend to continue to think through the many challenging issues and their implications in order to be in a position to help the CFPB achieve its twin statutory obligations under the ATR rule.

SFA appreciates the opportunity to provide the foregoing comments. Should you wish to discuss any matters addressed in this letter further, please contact me at (202) 524-6301 or at michael.bright@structuredfinance.org.

Respectfully submitted,



Michael Bright
CEO
Structured Finance Association

Appendix A: Summary Results of SFA Member Survey

I. INTRODUCTION

In response to the Consumer Financial Protection Bureau's (CFPB) Advanced Notice of Proposed Rulemaking (ANPR) on the Ability to Repay-Qualified Mortgage (ATR-QM) Rule, the Structured Finance Association (SFA) created a survey designed to elicit initial viewpoints from its members across the securitization industry. Surveys such as this are often utilized by our organization to gauge broad market views. This survey covers issues and considerations within the current QM and non-QM markets and potential approaches to the expiration of the "QM Patch".

In addition to the survey, SFA convened a QM Symposium in June of this year, bringing together regulators, policymakers, issuers, investors, law firms, housing and community advocates, rating agencies, diligence firms, and data and analytic providers to discuss the ATR-QM rule and the implications of the expiration of the Patch. SFA also formed a QM Task force comprised of its members, and which includes firms involved at every stage of the loan origination and securitization process in both the QM and non-QM markets. Over the course of the past few months, SFA staff have been actively engaging with and seeking input from our members who have interest in this issue.

We believe that the varying views expressed by survey respondents speaks to the complexity of this rule, as well as the necessity of striking the appropriate balance between competing rationales embedded within the rule. However, we believe that there is a path forward for the CFPB to perform its statutory obligation in protecting consumers from loans that they can't afford, while also creating a framework where lenders and investors can make loans to a wide variety of borrowers, leveraging technology and innovation in a dynamic manner in a way that benefits all stakeholders in the mortgage market.

I(A). DEFINITIONS USED FOR QM-ATR SURVEY RESPONSES

Throughout the survey results displayed in this appendix, we often breakout the responses by the member firms' role(s) in the residential mortgage market. For member firms that participate in more than one role, we categorized the respondents as outlined below. Please note these categories are based on self-reported data.

Investor Only: Respondents indicated their role in the market is solely as an Investor in the residential mortgage and/or RMBS market – not as an Originator of mortgage loans or Issuer of RMBS.

Issuer Only: Respondents indicated their role in the market is solely as an Issuer of RMBS.

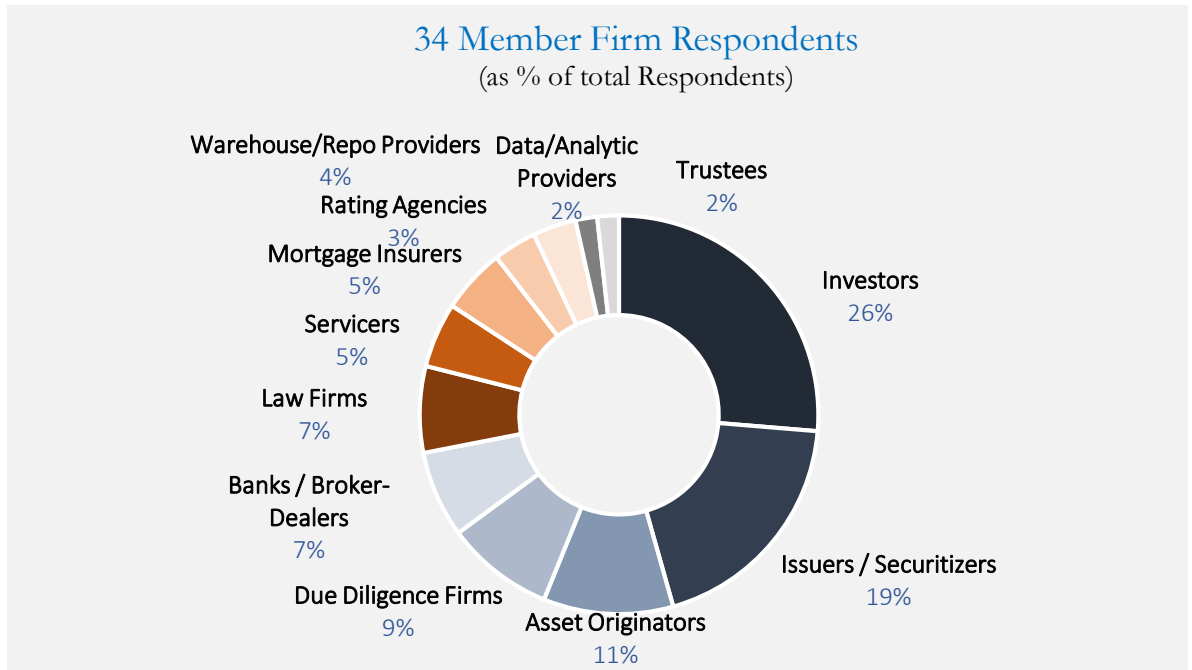
Originator PLUS: Respondents indicated their role in the market is as an Originator of residential mortgages. Note the respondents also selected their role as servicer – but not Investor or Issuer.

Both Investor + Issuer: Respondents indicated their role in the market is both as an Investor and Issuer – but no other role.

Investor/Issuer Plus: Respondents indicated their role in the market is as an Issuer, Investor, as well as other roles, such as originator, broker-dealer and servicer.

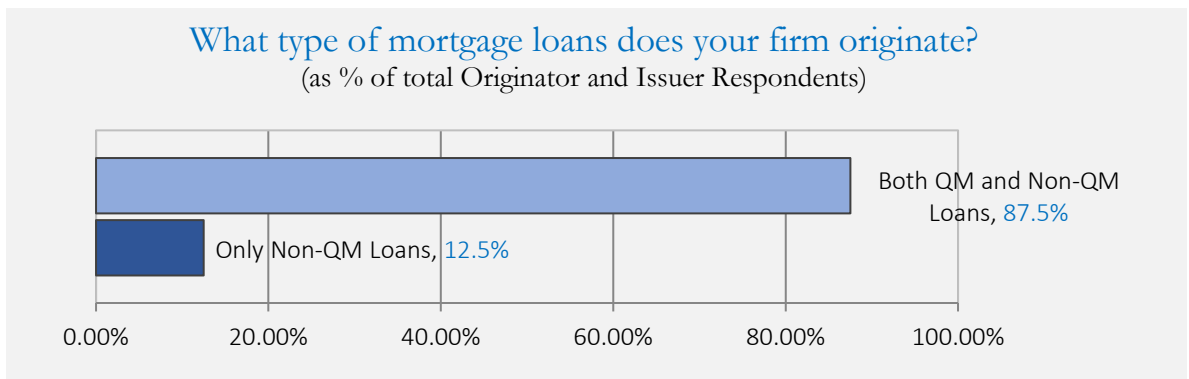
II. RESPONDENT OVERVIEW

- Overall, SFA received feedback from a broad spectrum of market participants both directly and indirectly impacted by the QM Patch.



Note: Survey question was asked of all respondents. If a respondent selected multiple answers (i.e., they participate in multiple roles in the market), those multiple answers are reflected in the chart above.⁴

- Among respondents who identified as an “Issuer” or “Originator”, ~88% currently issue or originate both QM and Non-QM loans while ~13% only originate or issue non-QM loans, as depicted in the chart above. Note: No respondent originates only QM loans.

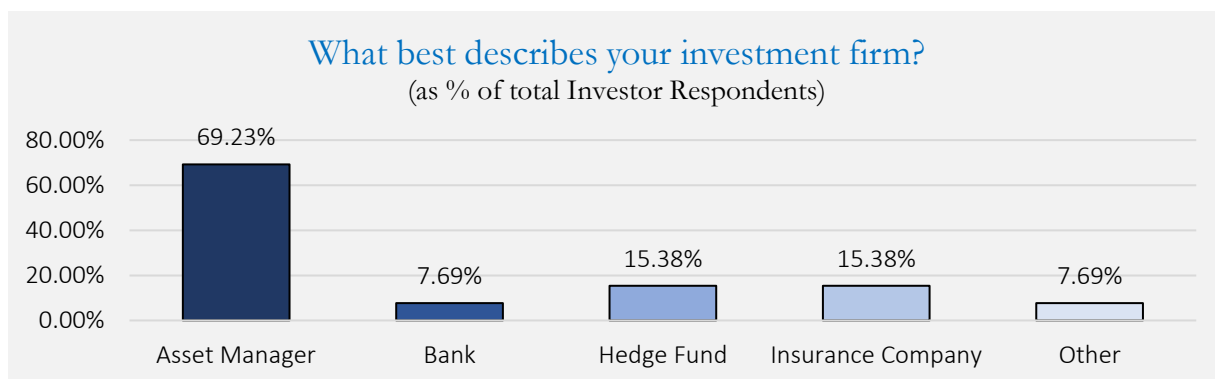


Note: Survey question was asked of Originator and Issuer respondents only.

⁴ Full Survey Question: What best describes your role in the residential mortgage market? (Select all that apply)

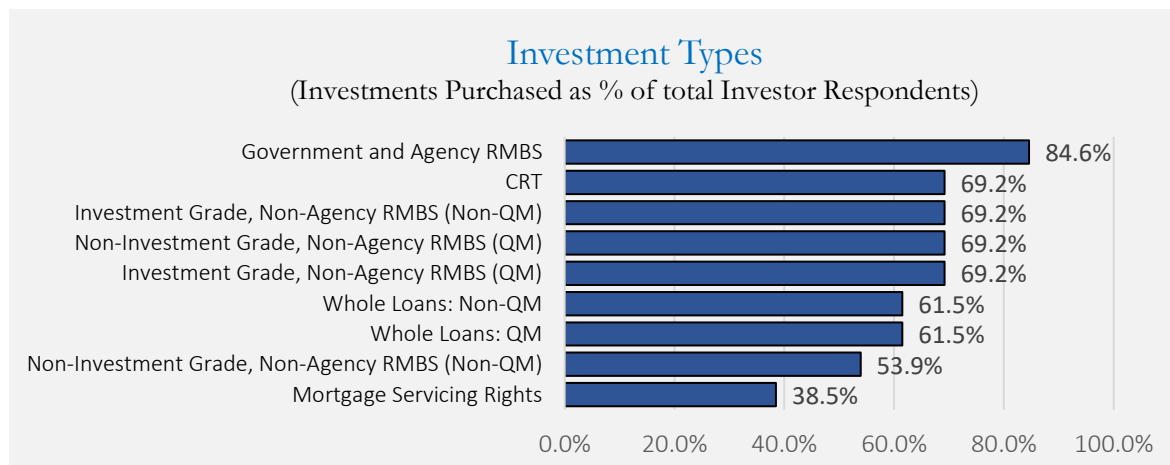
II(A). RESPONDENT OVERVIEW – INVESTOR RESPONDENTS

- Among the respondents who identified as an “Investor,” ~69% classify their firm as an “Asset Manager,” ~15% classify their firm as either a “Hedge Fund” or “Insurance Company,” and ~8% classify their firm as a bank, as depicted in the chart below.



Note: Survey question was asked of Investor respondents only.

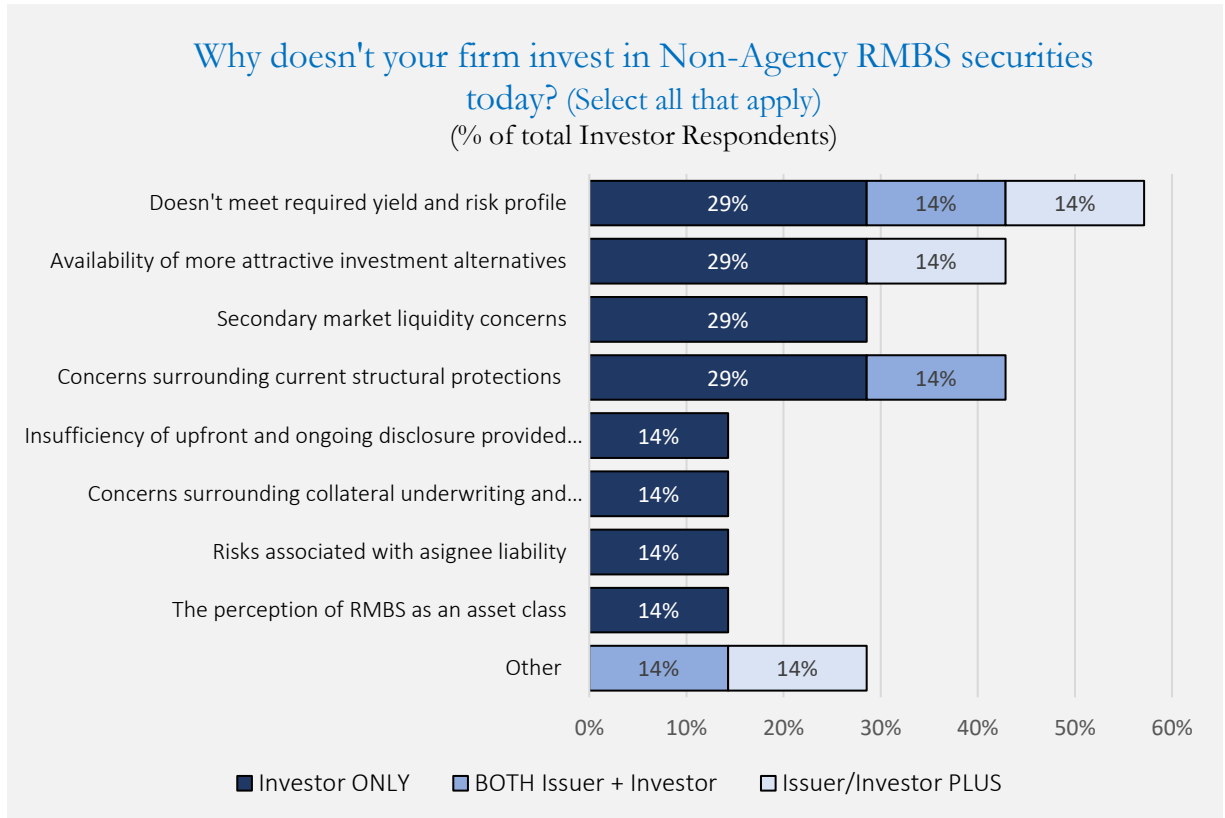
- The chart below details the types of investments that SFA Investor respondents purchase and own. Government and Agency RMBS are the most prevalent product, followed by CRT, and then the other assets listed below in descending order.
- Among the respondents who identified as an “Investor,” ~69% of respondents currently invest in investment-grade non-QM securities, with ~62% buying non-QM whole loans, and ~54% investing in non-investment grade non-QM securities, as depicted in the chart below.



Note: Above survey question was asked of Investor respondents only.⁵

⁵ Full Survey Question: What investment types do you and your firm make in the residential mortgage market? (Please select all that apply)

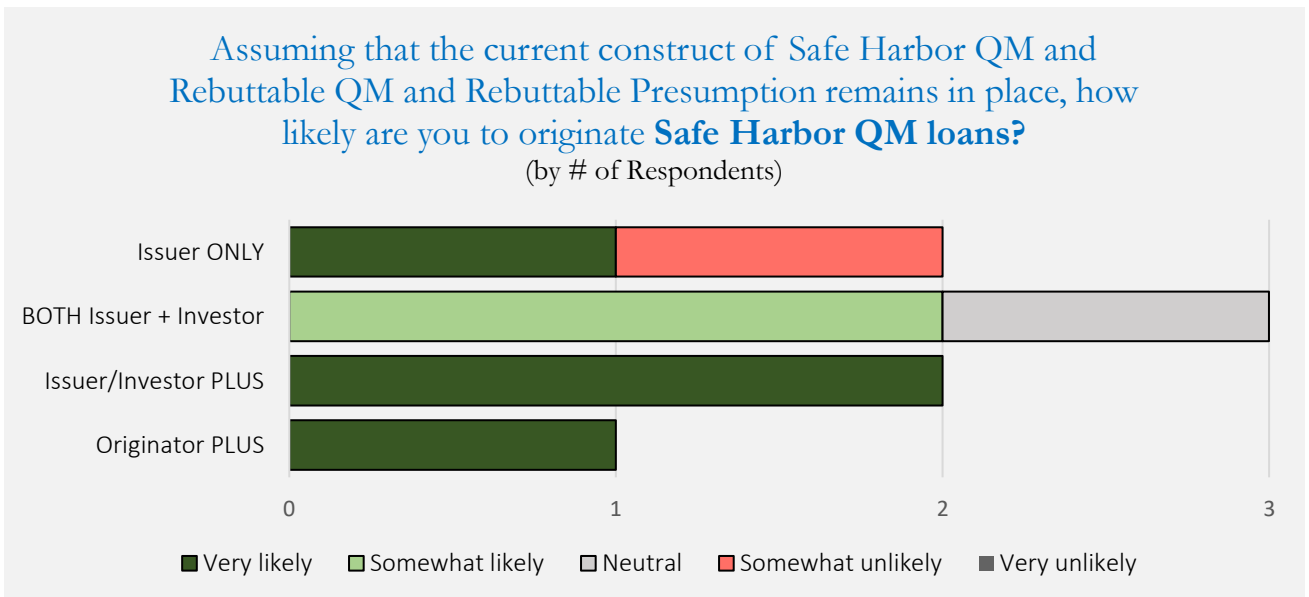
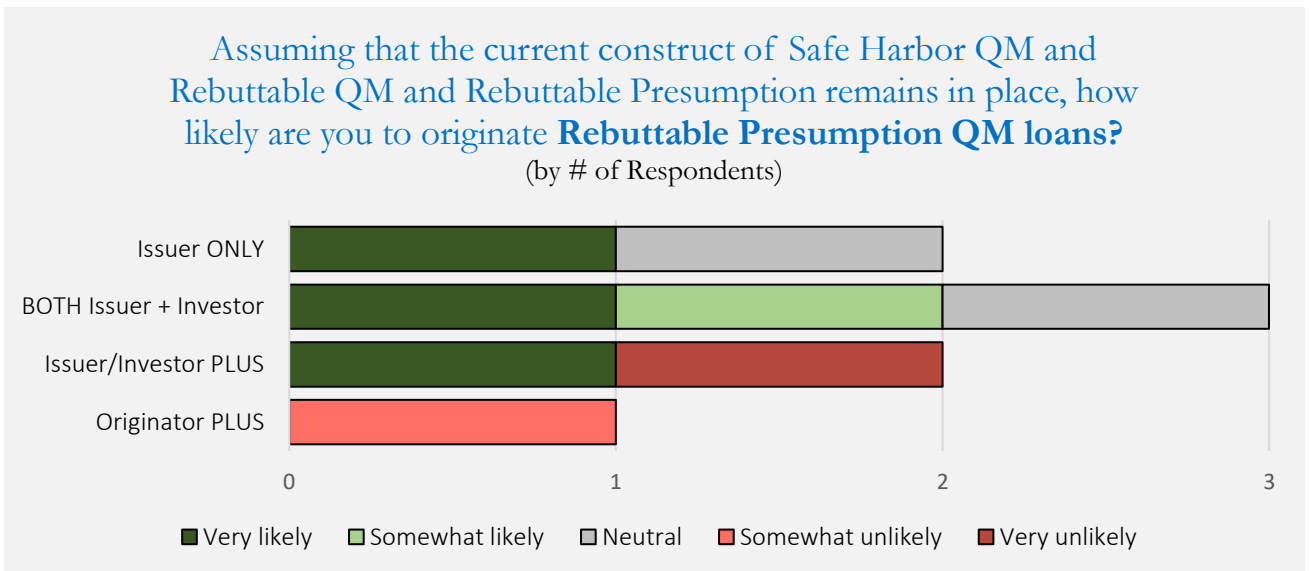
- When Investor respondents who noted that they don't invest in non-agency RMBS were asked what factors impacted their decision to not invest, more than half (57%) cited lack of yield and risk profile as a key reason, while 43% cited availability of more attractive investments and structural concerns, as depicted in the chart below.



Note: Survey question was asked of Investor respondents who cited that they do not invest in Non-Agency RMBS.

II(B). RESPONDENT OVERVIEW – ORIGINATOR AND ISSUER RESPONDENTS

SFA asked Originator and Issuer member respondents for feedback regarding the current state of the market. Among those questions was whether there is appetite to originate and issue rebuttable presumption loans and/or safe harbor loans. The two charts below show that there appears to be some interest among different categories of issuers and originators to issue and/or originate both Rebuttable Presumption loans and Safe Harbor loans.

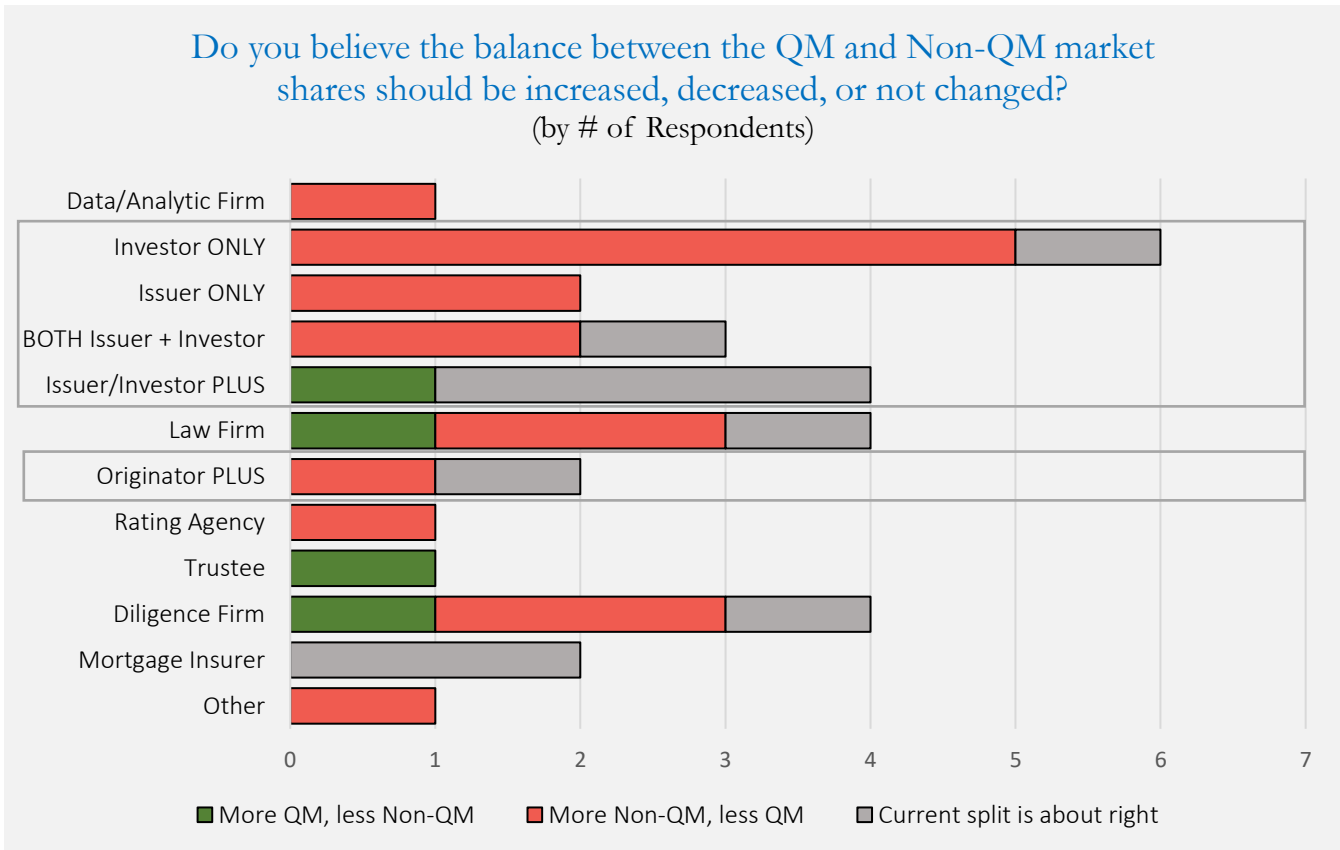


III. QM-ATR RESPONSES

III(A). IDEAL SIZE OF THE QM VS. NON-QM MARKETS

Overall, SFA Member Respondents are split about the optimal market share of QM vs. non-QM Markets.

- ~55% of respondents indicated that there should be an increase to the current non-QM market share, while ~32% believe that the current composition is about right, and ~13% believe there should be an increase to the current QM market share.
- Among respondents who identified as an “Issuer,” “Investor,” and “Originator”, ~63% believe that there should be an increase to the current non-QM market share.
- It’s important to note that respondents were asked about QM versus Non-QM market share and not market size. Some respondents indicated a desire to grow one or both market segments in absolute size, not just relative market share.

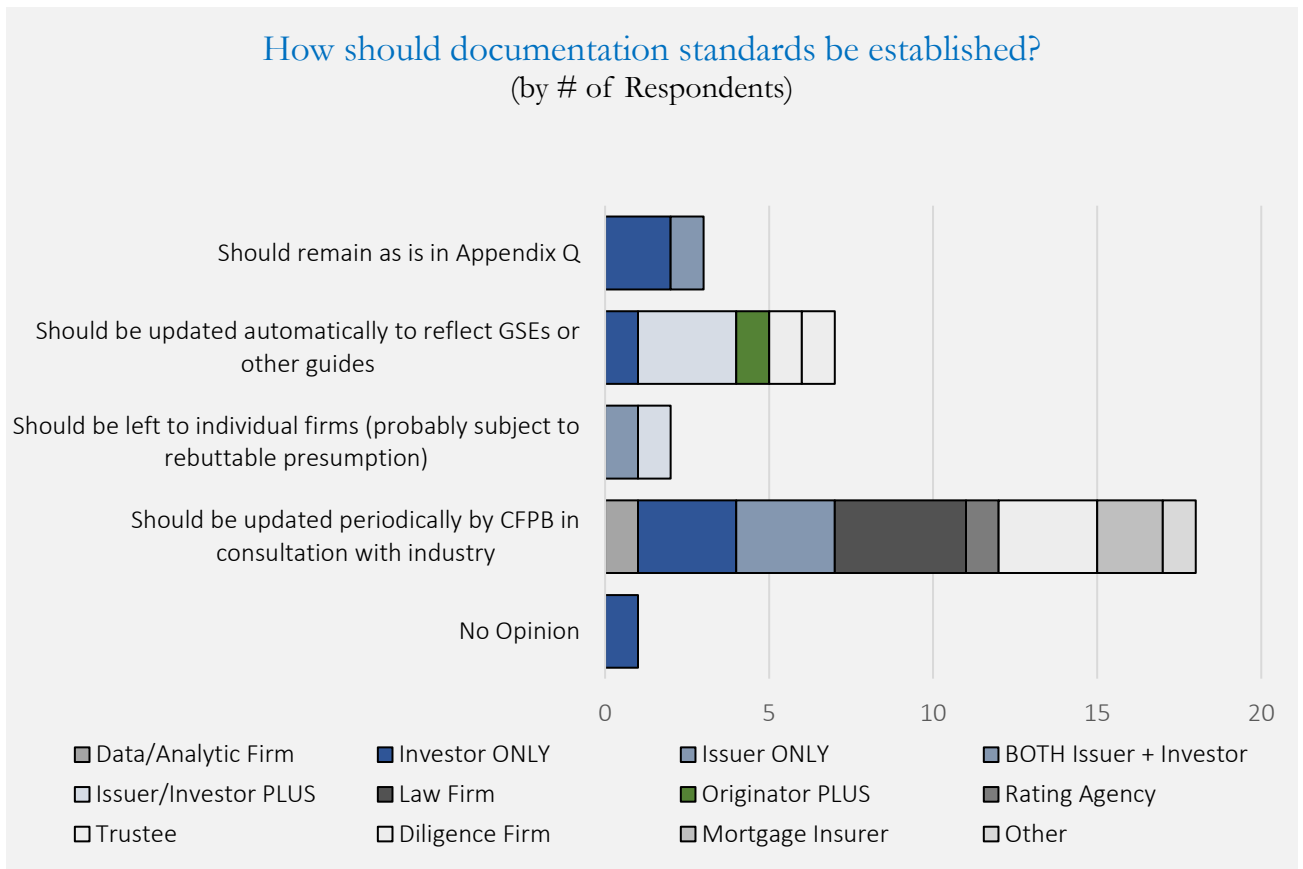


Note: Survey question was asked of all respondents.

III(B). CLARITY OF RULES APPLICATION

The current QM rules requires income verification and documentation by following Appendix Q, which some believe suffers from a lack of clarity. Respondents were asked about different potential approaches to offering greater clarity.

- Given the survey options, most respondents favor an approach where the CFPB updates industry-wide definitions and means of verification on an ongoing basis and in consultation with industry.
- A minority favor deferring to GSEs or allowing individual firms to set their own definitions that would grant a presumption of compliance with QM.

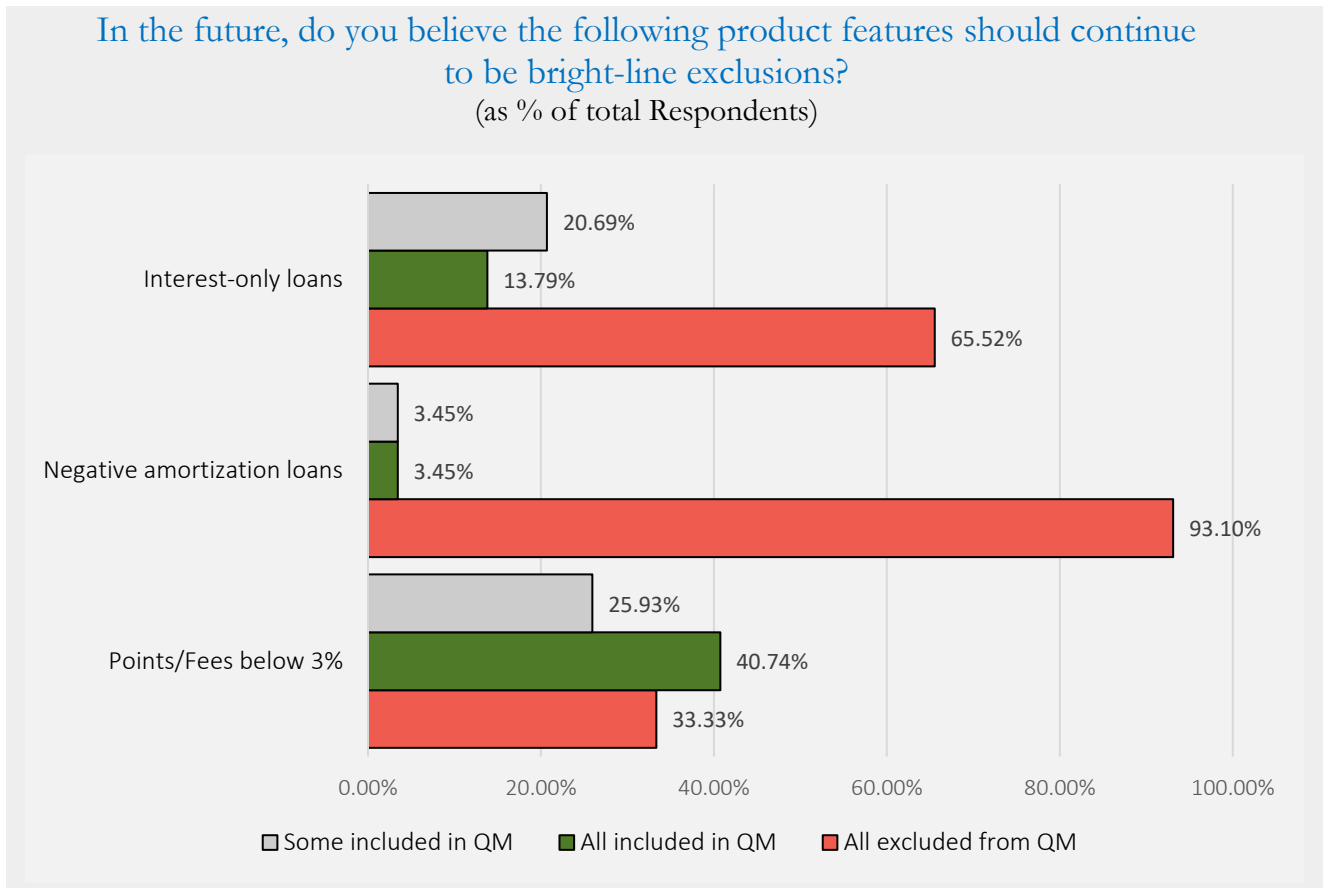


Note: Survey question was asked of all respondents.

III(C). PRODUCT AND FEATURES RESTRICTIONS

Overall, a majority of SFA member respondents agree that interest-only loans and negative amortization loans should not be eligible for QM status under any circumstance.

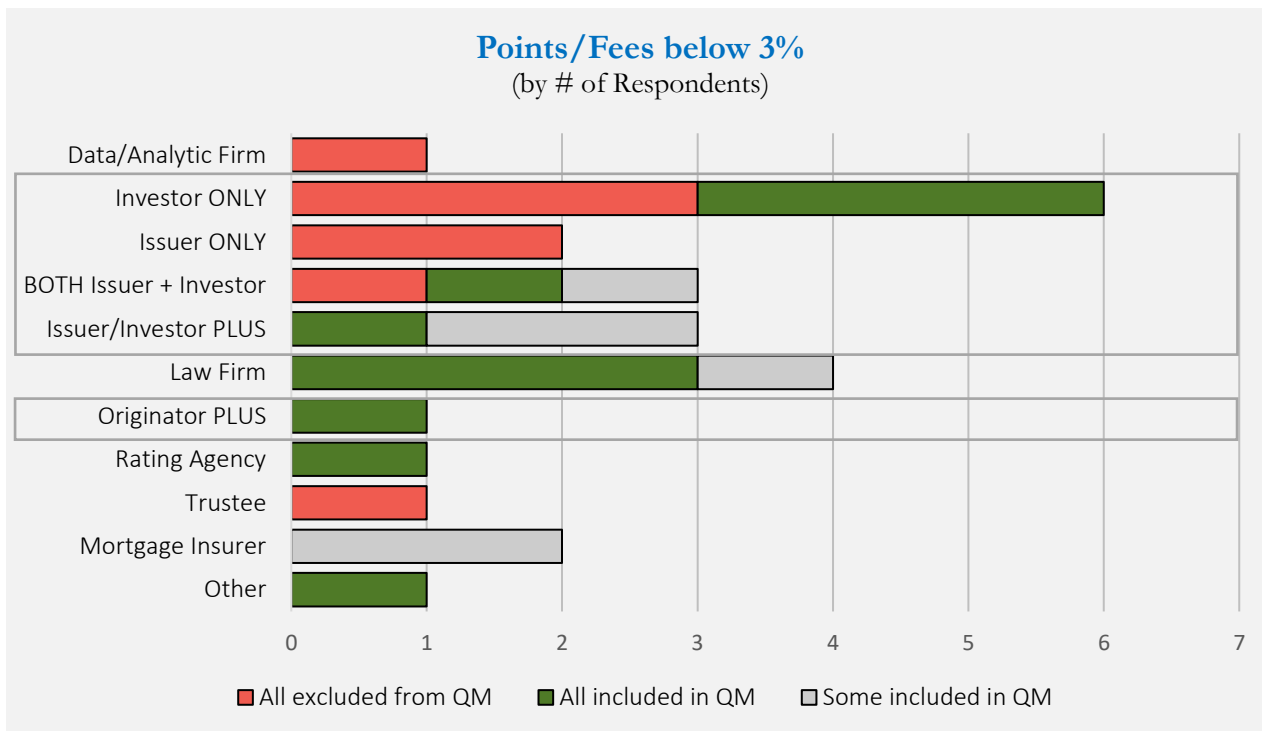
- When asked which products should continue to be bright-line exclusions, ~93% of respondents suggested that negative authorization loans should not be eligible for QM status while ~66% believe interest-only loans should be excluded from QM.



Note: Survey question was asked of all respondents.⁶

⁶ Full Survey Question: Currently, certain product features (no interest only-loan, no negative amortization loans, points and fees generally less than 3% of the loan balance, etc.) are bright-line exclusions from QM status. In the future, do you believe these features should continue to be bright-line exclusions?

- However, there is more of a split with regards to loans with points and fees above 3% being eligible for QM.
 - Among the respondents, ~32% of respondents state that such loans should never be QM eligible, while ~24% say that such loans should be eligible in some circumstances, and ~44% say that all loans should otherwise be eligible to attain QM status.
- When examining responses by Membership Category, ~55% of investor and issuer respondents believe that there should be restrictions on loans with points and fees greater than 3%.
- Written comments from respondents reveal that there may also be a lack of clarity regarding the calculation of Points/Fees. Moreover, some respondents wondered whether 3% is the correct cutoff threshold. Some respondents noted that for lower balance loans, this limit may be a barrier for access to credit.



Note: Survey question was asked of all respondents.⁷

⁷ Full Survey Question: Currently, certain product features (no interest only-loan, no negative amortization loans, points and fees generally less than 3% of the loan balance, etc.) are bright-line exclusions from QM status. In the future, do you believe these features should continue to be bright-line exclusions?

III(D). SINGLE UNDERWRITING FACTOR FOR DETERMINATION OF QM STATUS

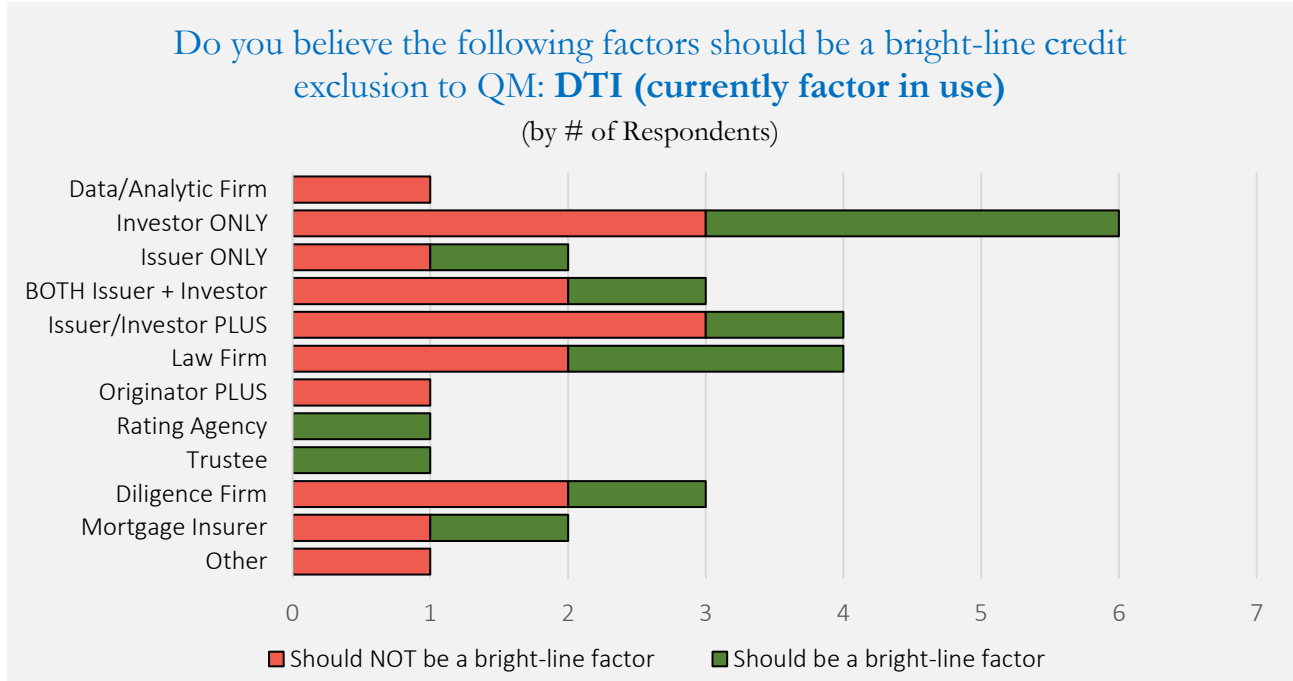
While SFA members largely agree product features should differentiate between QM and non-QM, no single underwriting factor had the support of a majority of SFA respondents.

One major finding the data highlights is that there is currently no single, deterministic underwriting factor that has greater than 50% support, suggesting there is little consensus on whether a single, standalone underwriting factor should even be the primary basis of determining QM.

The question was posed in such a way that did not presume a single underwriting factor would or even should be in place. Respondents were asked questions about five different factors (DTI, LTV, Credit Score, Residual Income and APOR), but were not required to choose one, nor were they limited to choosing only one.

In theory, a respondent could have responded affirmatively to all of these questions, indicating that they may be open to using any of the listed underwriting factors in order to distinguish QM from non-QM. Alternatively, they could have rejected all of these factors, suggesting that an unlisted factor would be the correct single factor to use. However, in the comments, there were no suggestions as to what that unlisted factor might be. Thus, a possible conclusion to draw from respondents who answered “no” to all of these options is they believe that no single underwriting factor should be used to distinguish QM from non-QM.

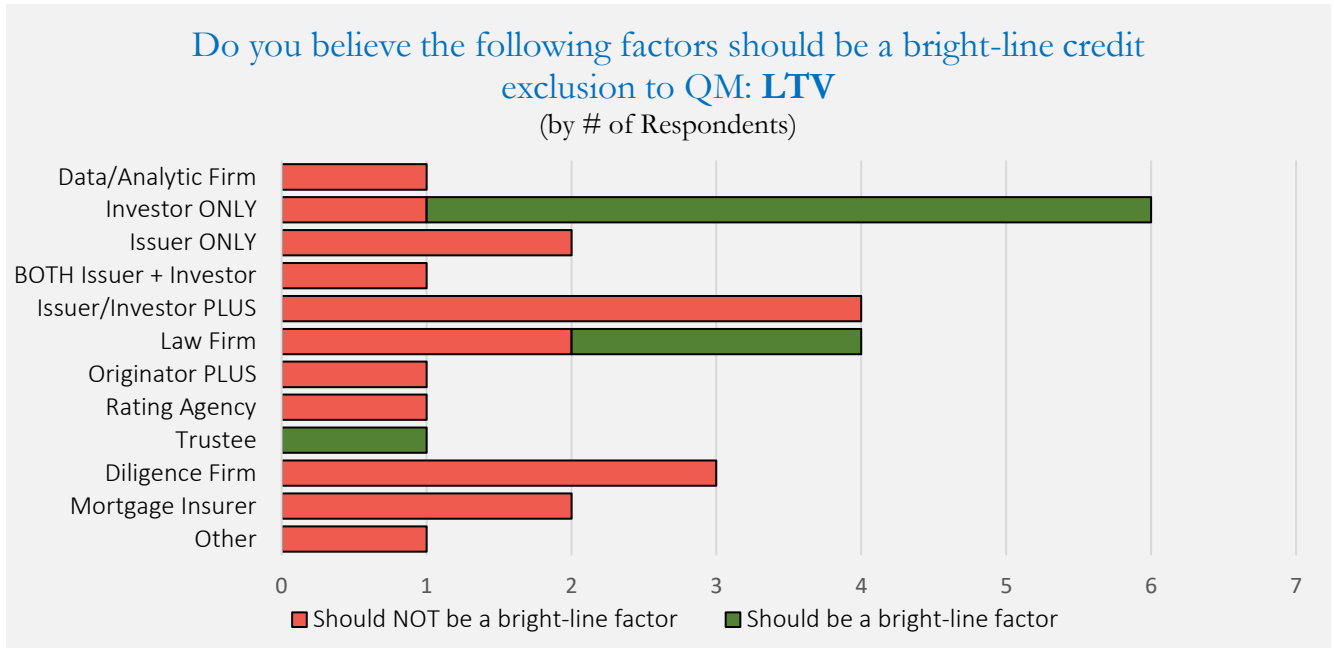
- Of the proposed standalone underwriting factors that could distinguish between QM and non-QM, DTI is the most supported (41% in favor, 59% opposed).



Note: Survey question was asked of all respondents.⁸

⁸ Full Survey Question: Currently, DTI above 43% is also a bright-line exclusion factor. In the future, do you believe DTI should be a bright-line factor? If yes, should the cut-off remain at 43%? Additionally, do you believe other credit factors should be a bright-line exclusion? If yes, at what level?

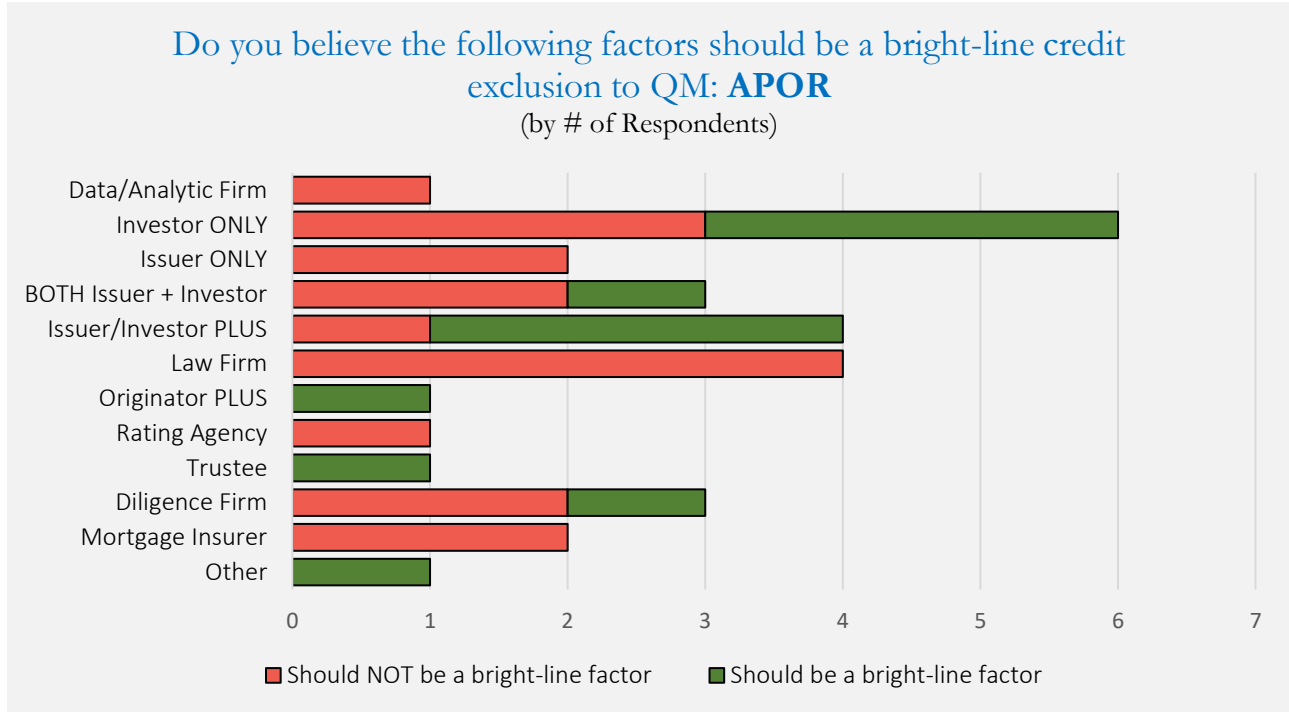
- Approximately 28% of respondents believe that if there is a single deterministic factor used to determine QM status, it should be LTV, while 72% oppose the use of LTV as the bright-line factor.
 - However, it is important to note that 83% of “Investor Only” respondents favored LTV as the determinant.



Note: Survey question was asked of all respondents.⁹

⁹ Full Survey Question: Currently, DTI above 43% is also a bright-line exclusion factor. In the future, do you believe DTI should be a bright-line factor? If yes, should the cut-off remain at 43%? Additionally, do you believe other credit factors should be a bright-line exclusion? If yes, at what level?

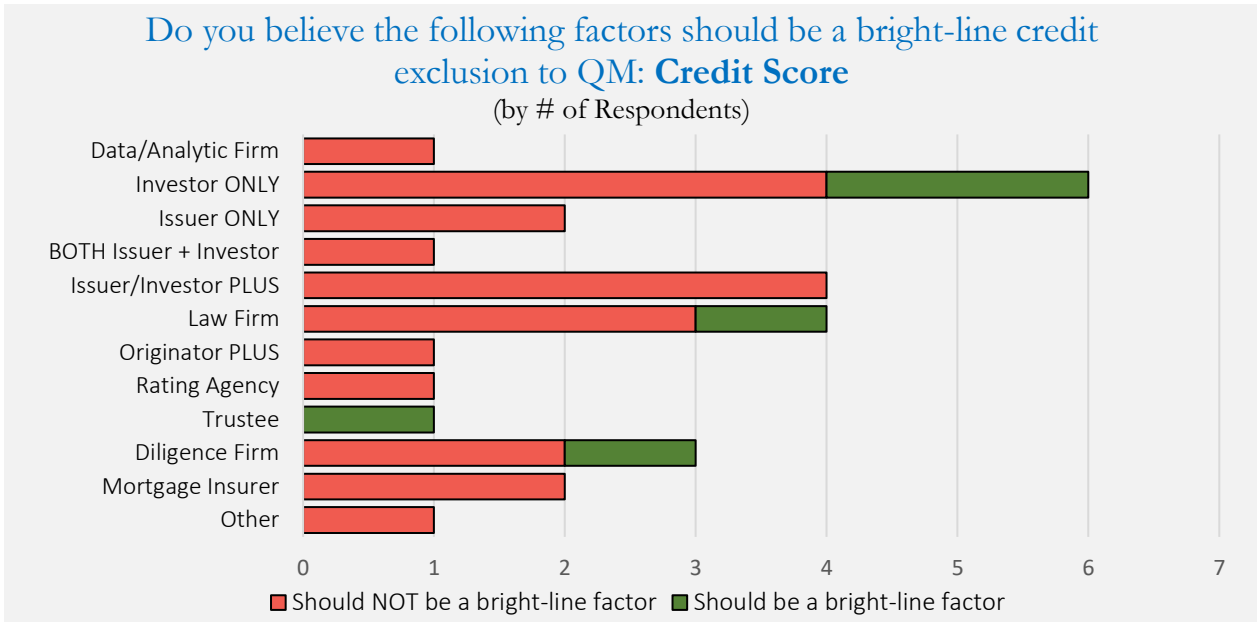
- 38% of respondents supported using APOR as the deterministic factor. Among SFA issuer and investor members, 47% supported using APOR.



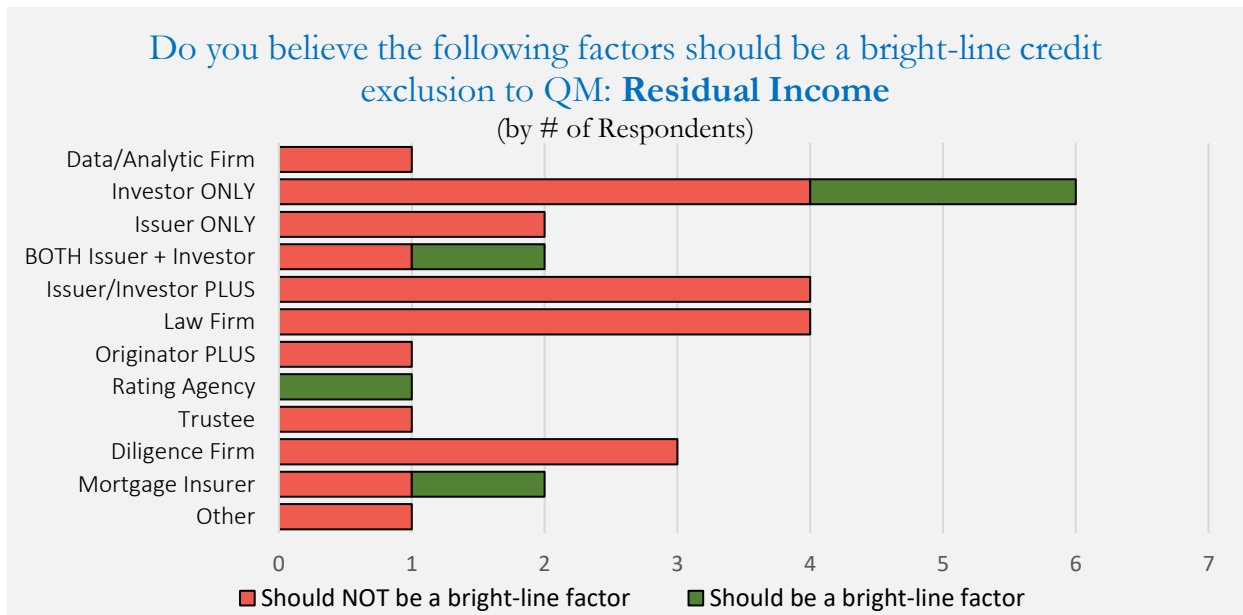
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- 83% respondents opposed credit score being the single deterministic factor, as depicted in the first chart below. The same percentages supported/opposed the use of residual income as a single deterministic factor, making these two the least-favored single deterministic factors, as depicted in the second chart below.



Note: Survey question was asked of all respondents.¹¹



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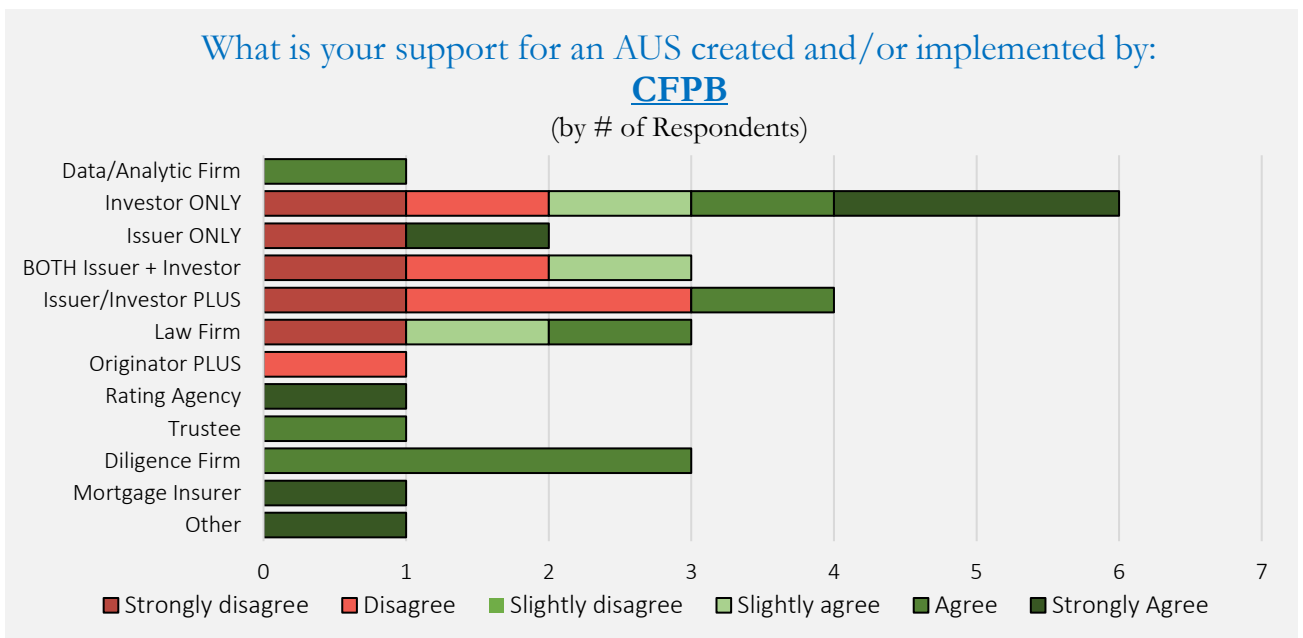
¹¹ Full Survey Question: Currently, DTI above 43% is also a bright-line exclusion factor. In the future, do you believe DTI should be a bright-line factor? If yes, should the cut-off remain at 43%? Additionally, do you believe other credit factors should be a bright-line exclusion? If yes, at what level?

III(E). COMPENSATING FACTORS APPROACH FOR QM STATUS DETERMINATION

The next set of questions asked about an approach to differentiate QM from non-QM loans using compensating factors. Before asking respondents what those factors should be, or how they should be weighed relative to each other, the survey asked respondents to consider the structure and/or method of implementing compensating factors. Support for compensating factors varied based upon the approach under which they might utilized.

A respondent could approve any or all of these approaches, suggesting that they have at least a potential interest in the use of compensating factors, and are open to a variety of ways in which compensating factors might be used to distinguish QM from non-QM loans. On the other hand, a respondent did not have to indicate support of any of these proposals, suggesting either (1) that they do not believe any of these approaches are the right way to implement compensating factors, or (2) that they do not believe compensating factors should be used to distinguish QM from non-QM.

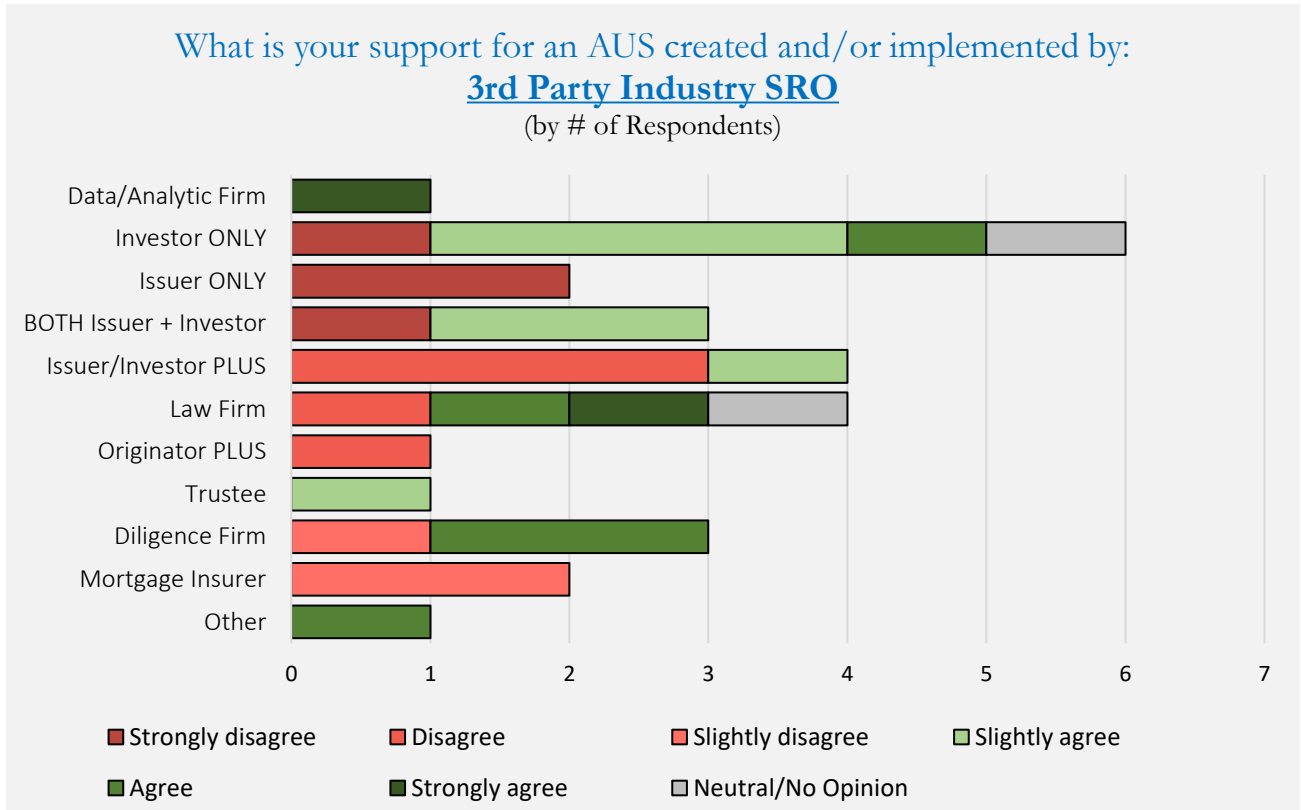
- Approximately 63% strongly agree/agree/slightly agree with an approach where the CFPB publishes regulations and guidance around compensating factors, while 37% strongly disagree/disagree/slightly disagree with such an approach.
- It is important to note, however, that among issuer, investor, and originator respondents, 56% strongly disagree/disagree/slightly disagree with such an approach, including 25% who strongly disagree. Excluding issuers, investors, and originators, 9% strongly disagree, while 91% strongly agree/agree/slightly agree with that approach.



Note: Survey question was asked of all respondents.¹²

¹² Full Survey Question: The CFPB should publish clear and transparent regulations and guidance that detail how industry participants should document and verify income. The details and nuances or gaps in those regulations and guidance will be filled in over time by

- Approximately 50% of respondents supported an approach where an Industry SRO created and/or implemented a utility AUS for the entire market.

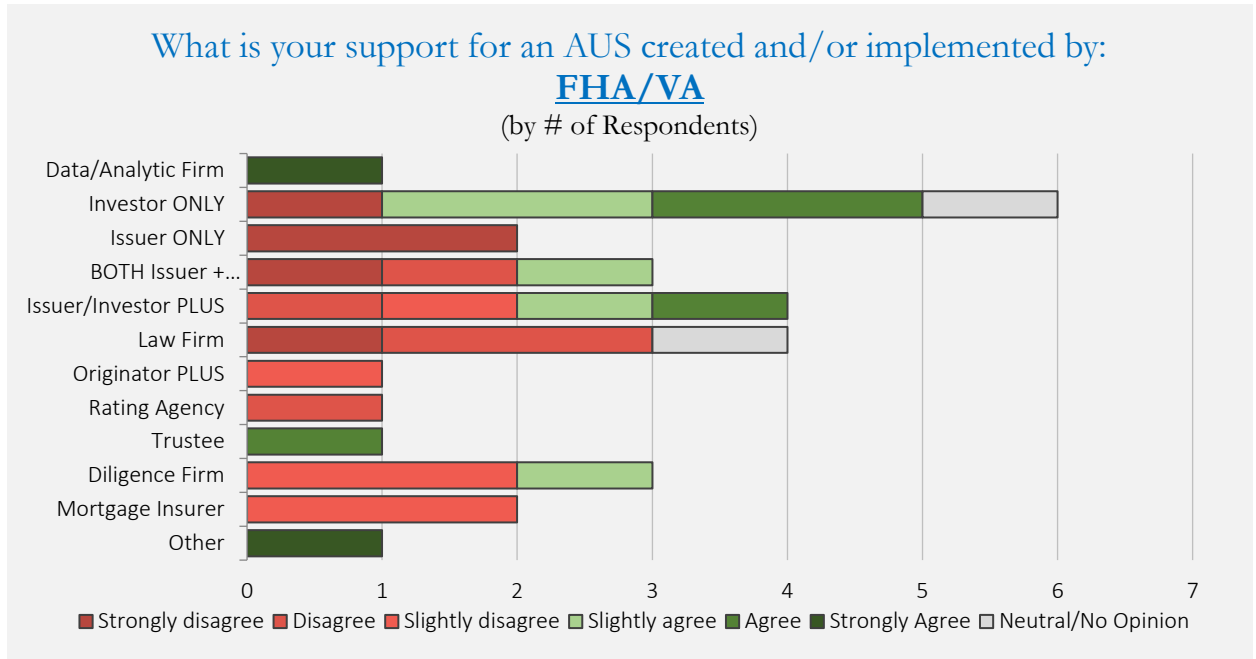


Note: Survey question was asked of all respondents.¹³

enforcement and judicial rulings. CFPB can update these regulations and guidance over time. (This is the current practice under ATR and Appendix Q.)

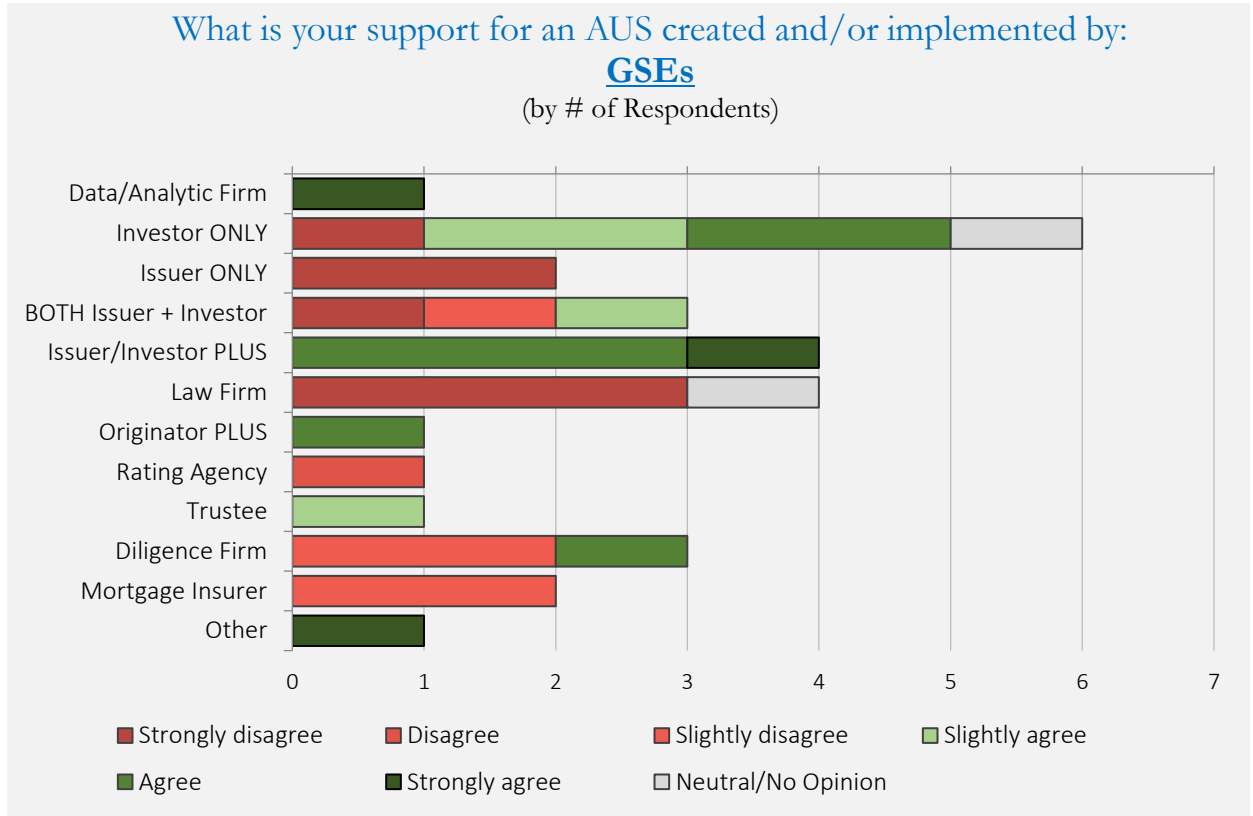
¹³ Full Survey Question: The CFPB should refer or delegate to existing underwriting guide and AUS from an 3rd party entity. This entity could be an industry non-profit or consortium comprised of industry participants and stakeholders who would develop industry-wide guides and AUS that documents & verifies income, and balance compensating factors for QM/non-QM and Safe Harbor/Rebuttable Presumption decisioning. CFPB would oversee the development of this industry consortium, and directly regulate it once it is in existence, approving its structure and ongoing governance.

- The approaches in the two charts below (CFPB deferring to the GSEs or FHA/VA guides to document and verify income and to their AUS for QM approval) had less than 40% approval, and both had greater than 50% disapproval.



Note: Survey question was asked of all respondents.¹⁴

¹⁴ Full Survey Question: The CFPB should refer or delegate to existing AUS and underwriting guides from other governmental entities for purposes of documenting and verifying income. (Examples of such AUS would include FHA or VA. These AUS could be also be configured to balance compensating factors for purposes of decisioning between QM or non-QM and between QM Safe Harbor and QM Rebuttable Presumption. CFPB would coordinate with FHA and VA in overseeing the guides and AUS.)



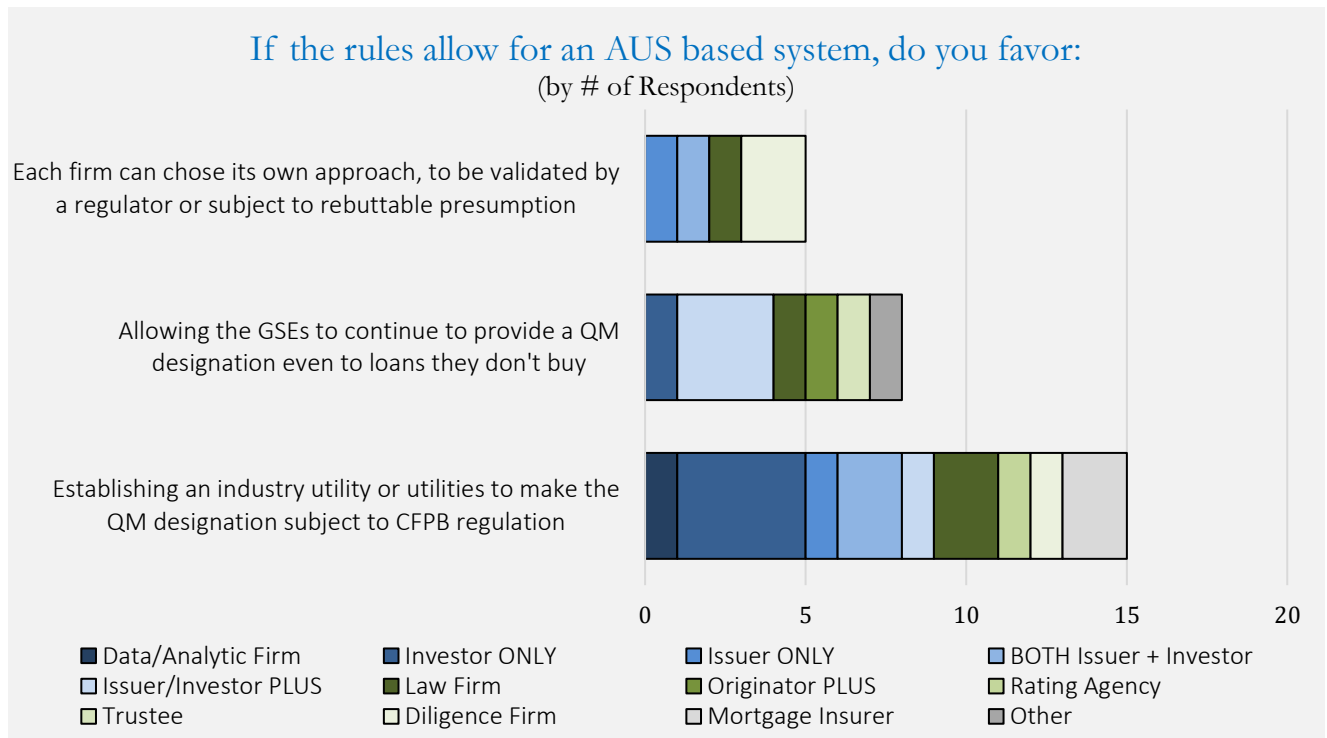
Note: Survey question was asked of all respondents.¹⁵

¹⁵ Full Survey Question: The CFPB should refer or delegate to existing AUS and underwriting guides from the GSEs for purposes of documenting and verifying income. These AUS could be also be configured to balance compensating factors for purposes of decisioning between QM/non-QM and between QM Safe Harbor/QM Rebuttable Presumption. CFPB would coordinate with FHFA in overseeing the guides and AUS.

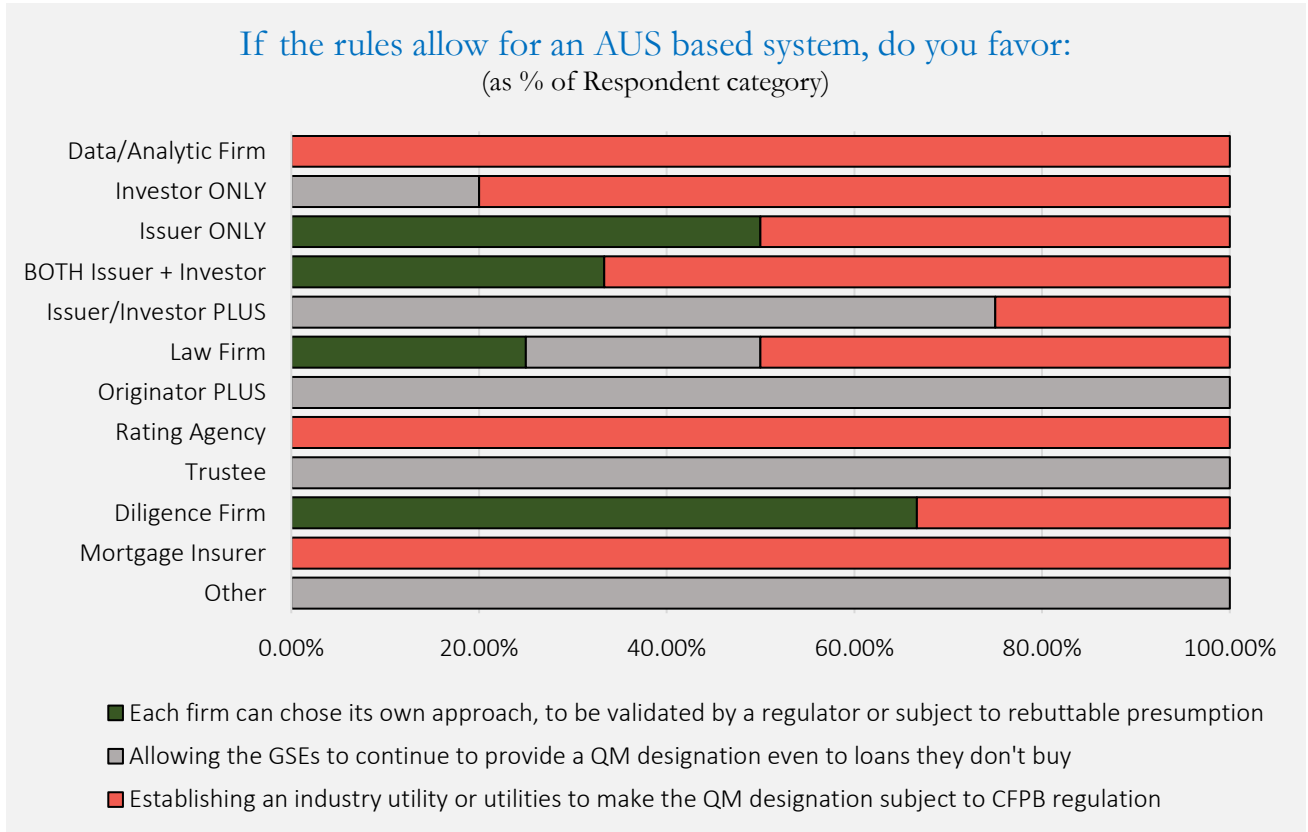
II(F). COMPENSATING FACTORS: WHAT CRITERIA TO USE

The previous question solicited views on whether an AUS employing compensating factors should be used. A follow-up question asked respondents to assume that the rules called for an AUS employing compensating factors, and asked for their preference among various options for implementation. Under this assumption, respondents were given three choices:

1. A firm is able to choose its own approach to compensating factors, subject to CFPB approval of such approach.
 2. The GSEs would be allowed to continue using their AUS to provide an approve/reject decision for all loans, even for loans that they do not purchase; and
 3. An industry utility or utilities would be established using compensating factors in order to make the QM determination for a given loan.
- 54% of respondents favored establishing an industry-wide utility subject to CFPB regulation, with 29% favoring the GSEs and 18% allowing individual firms to choose their own approach, which would subsequently be validated by a regulator or subject to rebuttable presumption.



The chart below shows the same data as the chart above, but broken out in a different way to illustrate how different category of respondents answered this question. As shown in the chart below, a majority of “Issuer ONLY”, “Issuer/Investor PLUS” and “Originator PLUS” respondents do **NOT** prefer an approach where the CFPB delegates to an industry consortium the establishment of a single AUS model that would act as an industry utility for purposes of determining QM eligibility.



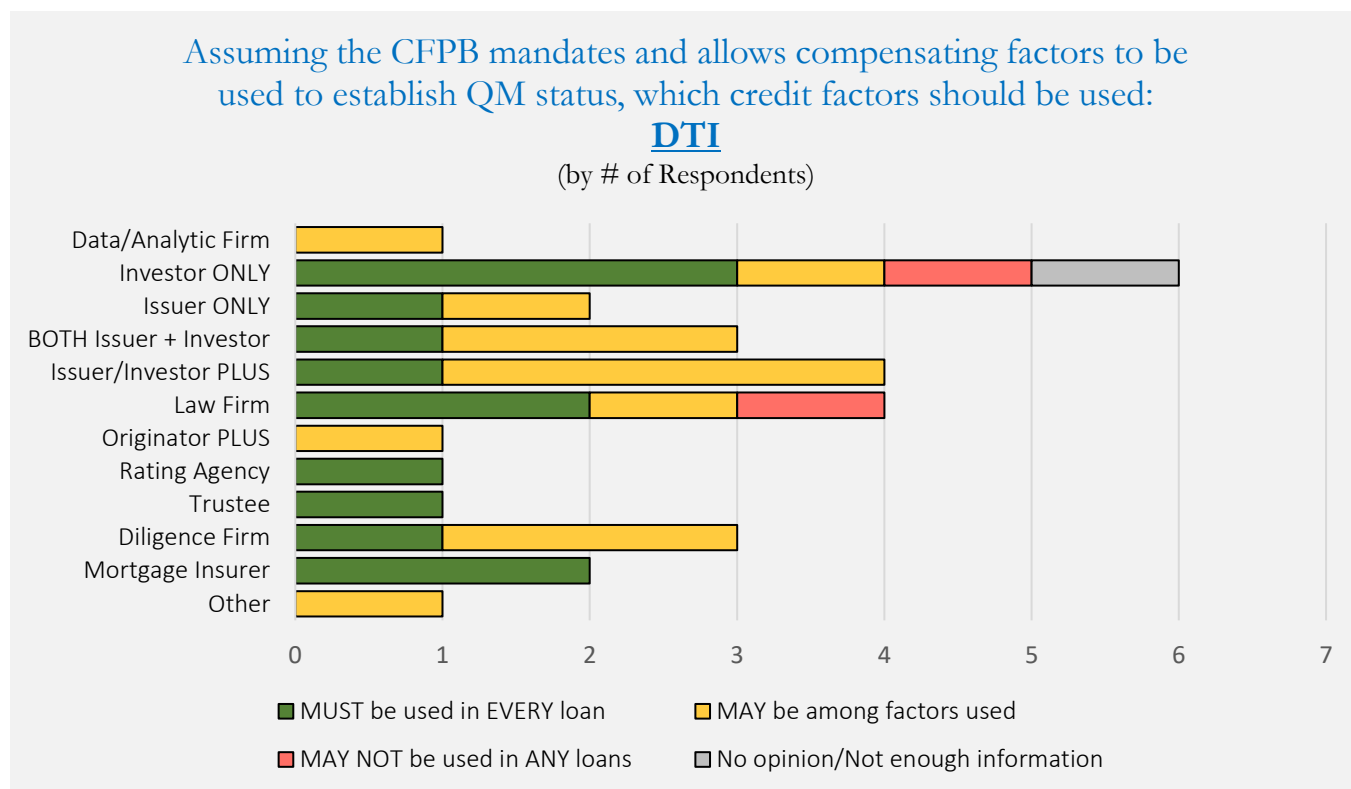
Note: Survey question was asked of all respondents.

III(G). AUS-BASED APPROACH FOR DETERMINATION OF QM STATUS

The previous questions asked respondents about their support for proposals that incorporate compensating factors. Even among member respondents who indicate support for compensating factors, there is less agreement on what exactly those factors should be.

Moreover, even assuming that a respondent believes a particular factor should be used in a compensating factors model, this question did not seek respondents’ views on whether there should be a range for any specific factor, or how each factor should be weighted relative to other factors. There was some qualitative feedback from survey respondents around caps (for instance, some suggestions of implementing a hard cap of 50% DTI).

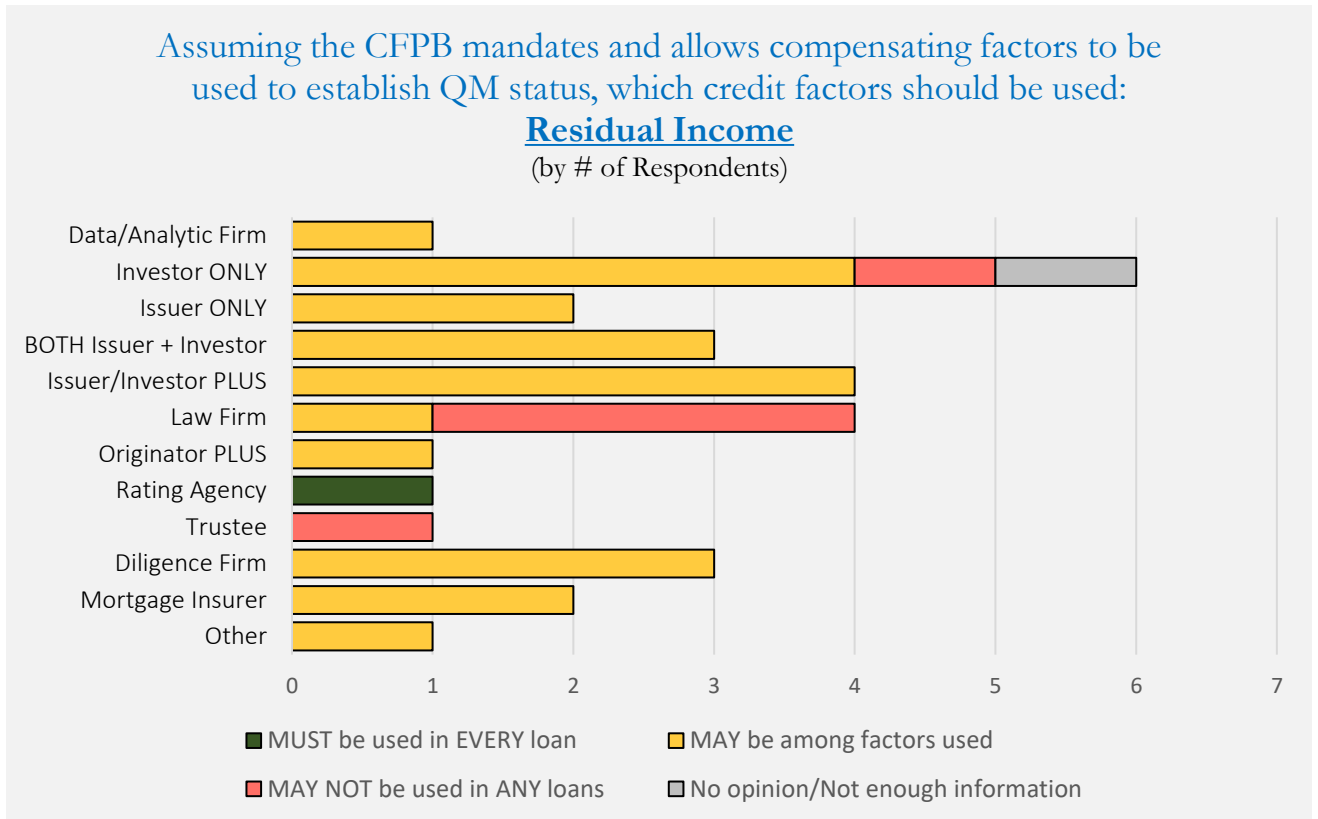
- Approximately 45% of respondents said that in a compensating factors model, DTI “may” be used, while another 45% said it “must” be among factors used to determine QM eligibility.



Note: Survey question was asked of all respondents.¹⁶

¹⁶ Full Survey Question: Assuming the CFPB mandates or allows compensating factors to be used to establish the threshold between QM and non-QM loans. Explain how each of these factors should be used, if at all. (Select one option for each compensating factor)

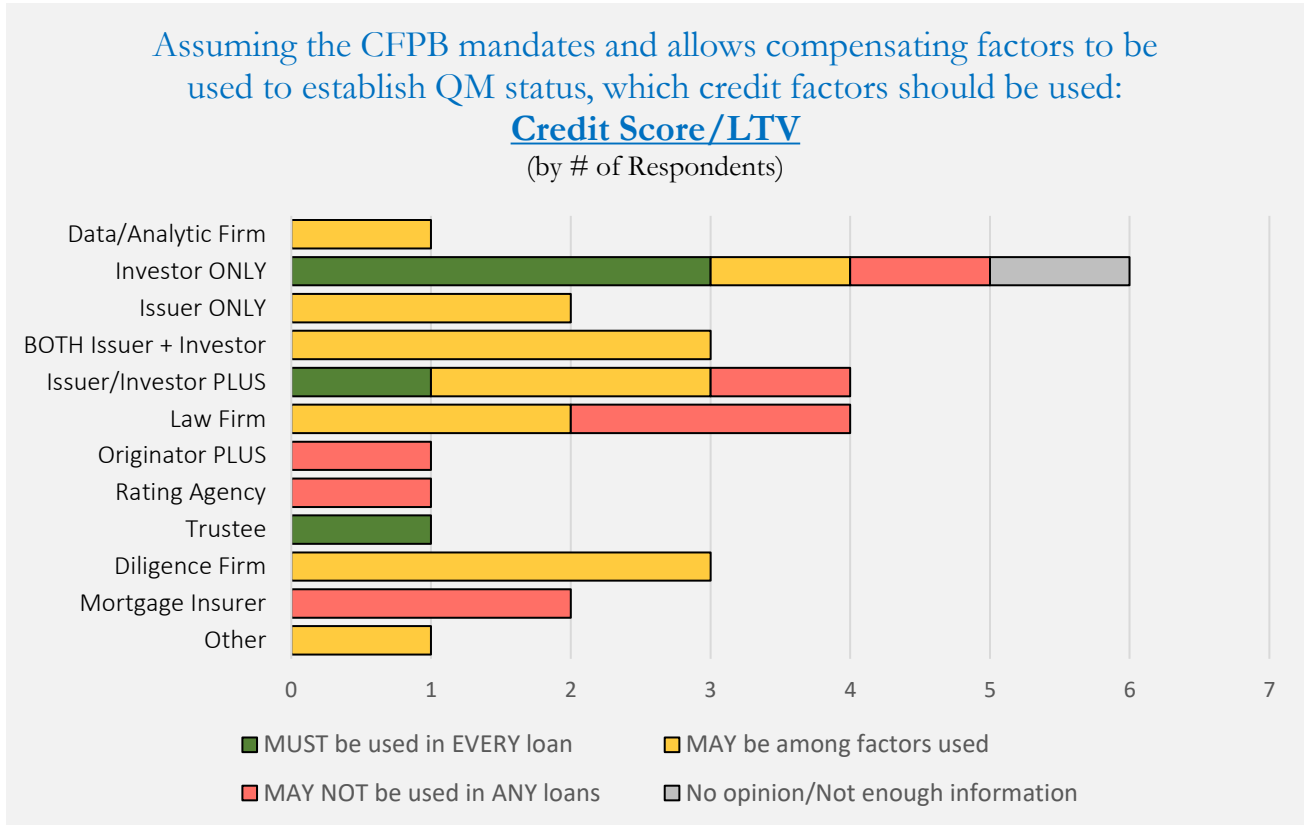
- Approximately 79% of respondents said that residual income “may” be used, while 17% said it “may not” be used.



Note: Survey question was asked of all respondents.¹⁷

¹⁷ Full Survey Question: Assuming the CFPB mandates or allows compensating factors to be used to establish the threshold between QM and non-QM loans. Explain how each of these factors should be used, if at all. (Select one option for each compensating factor)

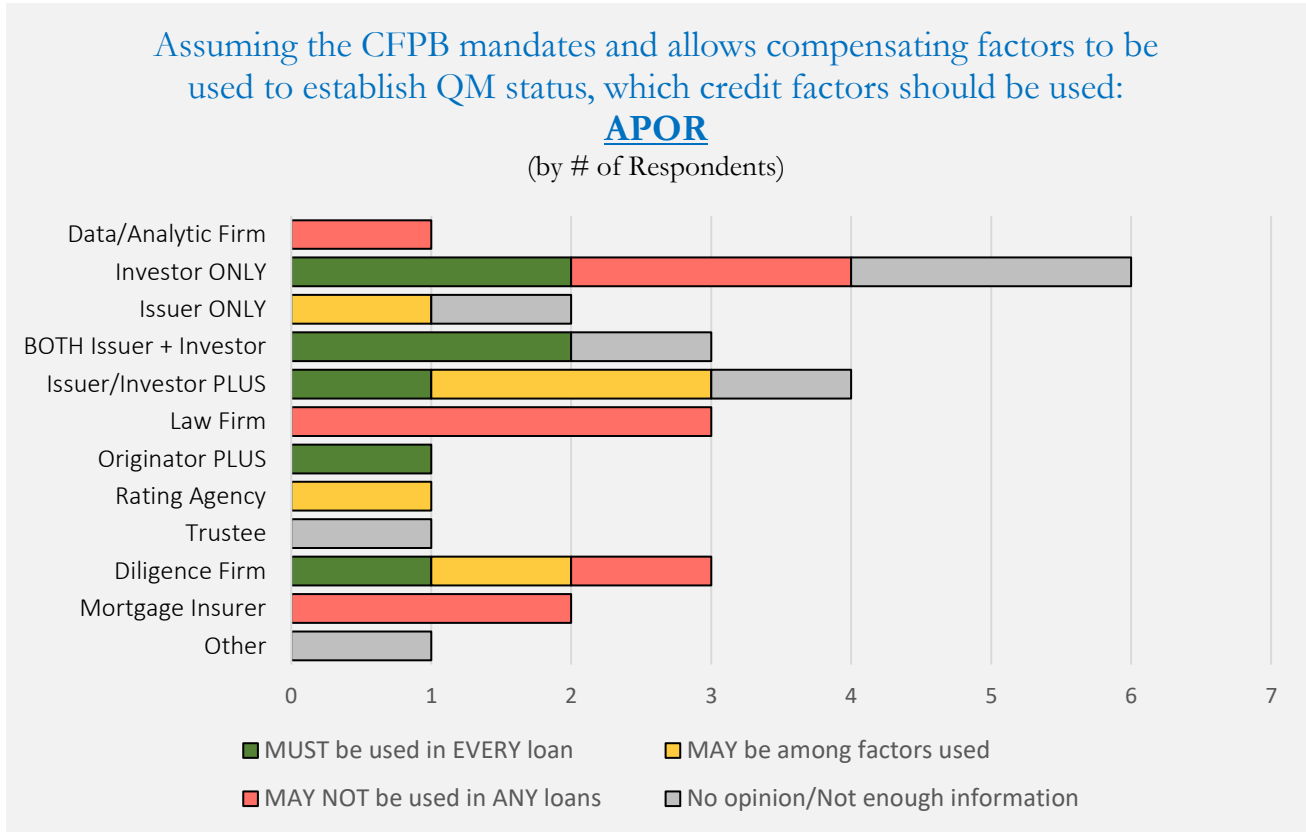
- 17% of respondents said that credit score/LTV “must be among” factors used, 51% said it may be among factors used, while 28% said it “may not” be among compensating factors used.



Note: Survey question was asked of all respondents.¹⁸

¹⁸ Full Survey Question: Assuming the CFPB mandates or allows compensating factors to be used to establish the threshold between QM and non-QM loans. Explain how each of these factors should be used, if at all. (Select one option for each compensating factor)

- An APOR threshold was a factor with the greatest divergence of opinion, with 32% of respondents saying it “may not” be used, 24% saying it “must” be used, 18% saying it “may” be among factors used, and 25% saying they did not have enough information.



Note: Survey question was asked of all respondents.¹⁹

¹⁹ Full Survey Question: Assuming the CFPB mandates or allows compensating factors to be used to establish the threshold between QM and non-QM loans. Explain how each of these factors should be used, if at all. (Select one option for each compensating factor)