



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

Re: Docket No. CFPB-2020-0020; RIN 3170-AA98; Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition

Dear Director Kraninger:

The Structured Finance Association (“SFA”) thanks the Consumer Financial Protection Bureau (“CFPB”) for the opportunity to provide our comments to the CFPB’s Notice of Proposed Rulemaking (“NPR”) on the CFPB’s proposed approach 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.

II. SFA RESPONSE TO QM ANPR

Since the CFPB first announced its Advanced Notice of Proposed Rulemaking (“ANPR”) last summer regarding the definition of QM, 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, as well as anticipation of encouraging private securitization of QM loans. As we detailed in our letter dated September 16, 2019 in which SFA provided its initial observation to the CFPB’s ANPR, the SFA’s consolidated set of initial observations in part were derived from two other key components: (a) a member survey we conducted and (b) a QM symposium we

convened. We refer you to our prior response, which we incorporate into this comment letter by reference, for a more fulsome description of our initial findings. Below, however, we highlight certain areas of consensus around general themes that emerged from our prior work and that we described in more detail in our prior comment letter:

- *Support of Twin Goals: Consumer Protection and Expansion of Responsible Credit*
- *QM Must Continue to Exclude Certain Product Features*
- *A Robust Mortgage Market Includes QM “Safe Harbor”, QM “Rebuttable Presumption”, and non-QM Market Spaces*
- *QM Patch Should Be Eliminated*
- *Improving Appendix Q and Providing Market Needed Clarity.*

II. QM NPR

Like the ANPR, the CFPB’s NPR does not focus on all of the statutory and regulatory elements of a QM loan, such as loan product types and features and upfront total points and fees. Instead, both the ANPR and the NPR focus on the statutory and regulatory elements of a QM pertaining to verification of income and assets and underwriting standards based on a direct review of a consumer’s personal finances. In doing so, the CFPB appears to have addressed constructively all of the general themes that our prior letter articulated.

The approach taken by the CFPB in the NPR is consistent with its statutory authority under the Dodd-Frank Act, which does not require the use of any particular underwriting standard, such as the GSE Patch or a 43% debt-to-income (“DTI”) ceiling and adherence to the standards set forth in Appendix Q. In lieu of prescribing underwriting standards that are substantially similar to existing requirements or those that modify, supplement or replace the existing standards, the CFPB concluded that price is a more dynamic, precise and objective test of consumer vulnerability than trying to create and manage to national underwriting standards. The CFPB’s reliance on price does not obviate the need for a specific loan level underwriting review of the borrower, according to the NPR. Instead, the CFPB essentially requires a second line of defense to access a conclusive presumption of ATR compliance—namely, that the creditor must verify the information on which it relies by documenting income and other assets using independent third party records and consider such verified information, including DTI and residual income, in accordance with a creditor’s own underwriting standards. The loan file must include evidence of the lender’s satisfaction of those requirements.

III. SFA'S RESPONSE

A. *Diversity of Member Views*

As a threshold matter, we applaud the thoughtful approach taken by the CFPB in seeking to structure a proposed regulation. We generally are pleased with the simplicity and relative objectivity of the CFPB's approach. Nevertheless, because of the diversity of views of our members, the SFA is not taking a position on whether price should replace prescriptive underwriting requirements or where the QM price line should be drawn among conclusive presumption, rebuttable presumption and a QM price cap or ceiling. Moreover, SFA is not taking a position on related issues, such as the impact on the pricing and availability of adjustable rate mortgages ("ARMs"), particularly 3- and 5-year ARMs, a larger percentage of which may become non-QM under the proposal by virtue of the NPR's calculation of APR for purposes of determining the price spread. Instead, we recommend that CFPB carefully consider the impact on access to credit and the need to protect consumers as it promulgates this rule. Moreover, SFA recommends that CFPB's final rule include regularly scheduled future reviews or lookbacks so that industry participants and stakeholders may provide statistical data and feedback on the impact on the market and access to and price of credit. Such reviews—particularly when scheduled in advance—allow the industry to update the CFPB on the impact of the rule to ensure that it is fulfilling its purpose.

B. *Maximizing Objectivity to Reduce Risk of Assignee Liability*

Where members generally do agree is the need for a test that is as objective as is feasible. An overarching priority of the investor members of the SFA is the promulgation of a final regulation that enables investors to design and implement due diligence procedures that are reasonably designed to determine in advance whether a loan satisfies the elements of a QM loan and satisfaction of the ATR requirements for non-QM loans. Without such a tool, it is difficult for investors to manage to the statutory risk of assignee liability. As we noted in our prior letter, 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 or instead for which they priced. There can be no assignee liability without primary liability, and efforts to bring certainty into the compliance analysis at least will help.

We separately may provide a comment to the CFPB's proposed rule on the impact of seasoning on the post-closing characterization of a loan as a QM loan.

C. *Relying on a Self-Regulatory Organization to Satisfy the "Consider and Verify Test"*

Beyond the initial screening test based on price, the lender's obligation "to consider and verify" is the heart of the proposed revision. In this regard, in contrast with clarity and certainty on restrictions of product types and features and total fees and charges, standards around income documentation and verification suffer from a degree of subjectivity and a lack of clarity. The NPR

proposes use of agency verification standards as of a fixed point in time as one safe harbor. It also encourages stakeholders to develop additional verification standards that the CFPB could incorporate into the safe harbor set forth in proposed comment 43(e)(2)(v)(B)-3, welcomes the submission of stakeholder-developed verification standards and commits itself to review any such standards for potential inclusion in the safe harbor.

While still in its nascent stage, and as noted in our prior letter, SFA is exploring the formation and operation of a self-regulatory organization—a SRO—to develop such standards. SFA requests that the final rule provide a process for the CFPB to review, evaluate and, if appropriate, approve standards developed by others, such as the SRO, as another regulatory safe harbor to satisfy the final rule’s verification standards, and without having to engage in notice and comment rule-making. We recognize that the NPR does not prescribe underwriting standards that a lender must use to satisfy the “consider” prong of the QM definition, but the SRO likely also would seek to develop best practices for underwriting that individual lenders and investors may elect to follow; if the final rule were to add prescriptive underwriting requirements, we request that the CFPB create a similar process for stakeholder proposed underwriting standards.

SFA envisions the SRO would be a neutral standard-setting organization to establish, validate, approve, and examine prudent documentation standards and eligible underwriting alternatives. The SRO would consist of all segments of the housing finance industry, including advocacy groups and stakeholders. Such standards would provide guidelines for originators to avoid a “race to the bottom,” promote responsible underwriting, and provide more transparency for investors. The goal would be to be intellectually honest, analytically rigorous, and untethered to the self-interest of any one group or interest. Ultimate success and adoption would require regulatory approval of any such standards as it relates to verification and, if the CFPB prescribes underwriting requirements in the final rule, underwriting, as well.

The SRO would be data driven and historical data would inform the SRO’s deliberations and determinations. Such data can be used to identify cohorts of loans over time, track borrower performance, and see what factors have the most impact on a borrower’s ability to repay a loan throughout different economic cycles.

IV. CONCLUSION

SFA members genuinely want to ensure the availability of affordable and accessible credit and believe the NPR is an important step in that direction. We hope the final rule remains consistent with this goal, maximizes the use of objective standards as feasible and provides a non-rule making process for the CFPB to approve additional safe harbors for documentation standards meeting enumerated criteria. Future scheduled reviews or lookback periods as part of the final rule may help ensure that these goals are being met. If the final rule were to add a prescriptive underwriting requirement, such safe harbor process should extend to that as well. In this regard, we believe that a privately established, neutral standard setting SRO may help create 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.

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,

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