March 30, 2015

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW.
Washington, D.C. 20552

RE: Docket No. CFPB-2015-0004; 3170-AA43; Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson,

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the proposed Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Proposal) issued by the Bureau of Consumer Financial Protection (CFPB or Bureau). The Proposal would make several revisions to the Bureau's mortgage rules which the CFPB believes would facilitate access to credit to borrowers in rural and underserved areas.

MBA strongly supports the Bureau's efforts to reexamine its mortgage rules to ensure that they are furthering the availability and affordability of safe and sustainable credit to qualified borrowers. To this end, MBA believes that the proposed revisions to the rules, particularly the Ability to Repay (ATR) / Qualified Mortgage (QM) rule, should extend more broadly to all lenders beyond particular types of institutions or business models.

MBA believes, however, the QM definition should be revised holistically, to ensure that underserved, qualified borrowers throughout the country, including low- and moderate-income and minority borrowers, have access to safe and sustainable credit to the maximum extent possible. Changes to underwriting standards should not be confined only to certain institutions ; they should be available to all creditors serving consumers. Stratification of the market causes unnecessary consumer confusion and lessens competition.

As outlined in this comment, we also believe CFPB should include several additional provisions in the final rule or propose additional changes to achieve this objective.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

I. Background and Summary of Comment

MBA appreciates that the Bureau proposes to exercise its authority to expand the definition of small creditor to allow more lenders to make loans that would not otherwise be QMs even if (1) a consumer's debt-to-income ratio exceeds 43 percent; or (2) the loan has a balloon payment if these loans are held in portfolio by the lender.

But, as indicated, MBA believes that further steps are needed to achieve its objective of extending additional safe and sustainable credit to a greater number of otherwise qualified borrowers. Specifically, MBA urges the CFPB to provide in the final rule that all lenders may make QMs loans with debt to income (DTI) ratios exceeding 43 percent or with balloon payments if the loans are placed in portfolio by the originating lender or sold to a creditor who will hold them in portfolio.

MBA also recommends that the CFPB either include in the final rule or expeditiously propose revisions to its Ability to Repay rule to: (1) Expand the safe harbor definition to include a greater number of QM loans; (2) Increase the dollar amount to define a small loan to permit greater points and fees considering the costs of these loans; (3) Broaden the right to cure to include DTI and other technical errors; (4) Revise the points and fees definition to exclude fees paid to affiliates; and (5) Replace the QM patch with transparent guidelines that make safe sustainable loans available to borrowers without depending on the Government Sponsored Enterprises underwriting standards. MBA also urges the Bureau to issue guidance which allows lenders to pay lower commission rates for Housing Finance Agency (HFA) loans to ensure the wider availability of these important products.

Finally, the Bureau should establish a workable process for providing authoritative written guidance on regulatory requirements.

II. Support for MBA's Comments

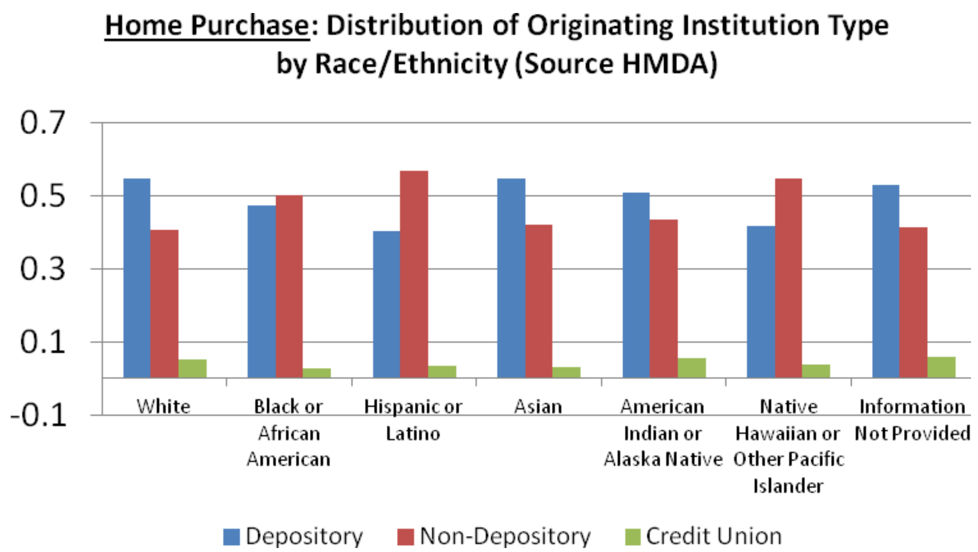
A. Credit outside of the qualified mortgage box remains exceedingly tight for all but the most well off borrowers.

QM safe harbor loans are the currently the only type of mortgage credit widely available at affordable rates. Most lenders are not making non-QM loans and many are not making rebuttable presumption QMs loans. As a result, some categories of borrowers that should qualify for a QM are having trouble gaining access to safe, sustainable, affordable credit.

Additionally, there is no active secondary market for conventional QM safe harbor loans. The limited market for non-QM and non-safe harbor loans means that these loans are generally more expensive, if they are available at all. To date, only wealthier borrowers have been able to receive non-QM or non-QM safe harbor loans at affordable rates.

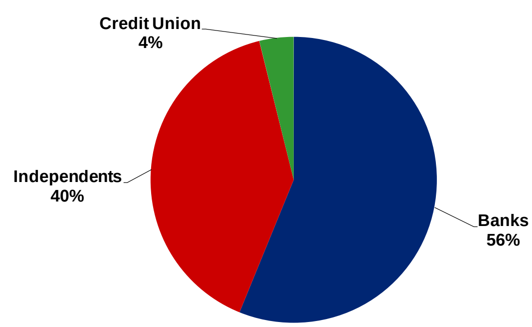
B. Many underserved borrowers, including minorities, access credit through non-depository lenders who typically do not portfolio loans.

Non-depository lenders, including independent mortgage banks, are an important source of access to credit for underserved borrowers and as a result have played a key role in the housing recovery. Based on HMDA data from 2013, the most recent year for which data are available, 50 percent of African American borrowers and 57 percent of Hispanic borrowers obtained home purchase mortgages through non-depository institutions. Several large institutions also serve a high degree of minority borrowers.

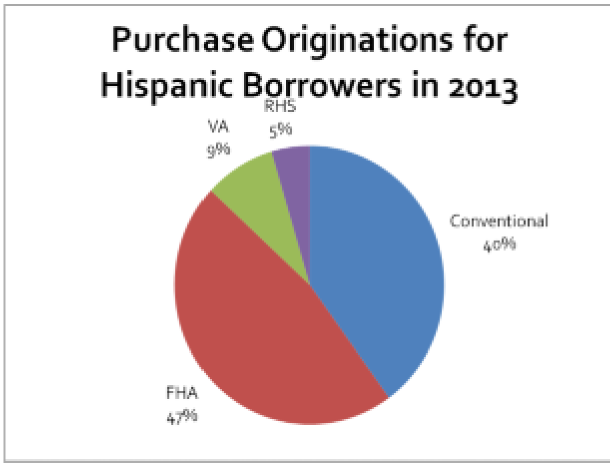


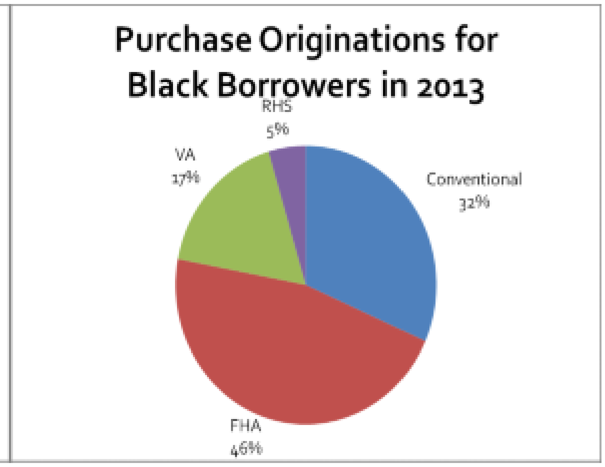
Although IMBs, in particular, represented a consistent 12 percent of reporting institutions in the 2013 HMDA data, they accounted for 40 percent of the dollar volume of purchase loans.

<u>Home Purchase</u>: Dollar Volume (Source: HMDA, MBA)



It should also be noted that within that footprint, IMBs have also focused more on the government purchase market than traditional banks. In 2013, one-third of IMB originations were comprised of FHA, VA, and USDA-backed loans. These government back programs play an outsize role in providing access to credit to underserved minority communities -- approximately 60 percent of Hispanic borrowers and 68 percent of Black borrowers obtained purchase mortgages through a government insured program.





III. Steps CFPB Should Take to Provide Access to Credit to Qualified Borrowers

MBA believes that the Bureau's mortgage rules should be revised as follows to ensure that as many qualified borrowers as possible have access to safe and sustainable mortgage credit.

A. All loans originated which do not meet the 43 percent DTI limit that applies to the general QM definition; and balloon loans made by other lenders to borrowers resident in rural or underserved areas should be considered QMs if they are held in portfolio or sold to a creditor who will hold them in portfolio.

Dodd-Frank's amendments to the Truth in Lending Act broadly empower the Bureau "to revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers…."[2] This language was included to ensure that the Bureau has sufficient flexibility to adjust the QM definition to ensure that it was not unduly limiting access to credit.

In its Proposal, the Bureau states "[t]he interests of smaller institutions making portfolio loans are more likely to be aligned with the interests of those consumers with whom they do business." It is unclear, however, why this same reasoning would not extend to all lenders. All lenders who hold mortgage products have the same incentives to originate loans that are safe and sustainable, not only for the borrower, but also the lender who would bear any loss.

MBA believes that non-depository lenders who typically do not portfolio loans should also be allowed to serve underserved borrowers under a revised rule if they originate loans and then sell them to a creditor who will portfolio them for the three year holding period. In this model there would be a strong incentive for the originating lender to make safe and sustainable loans because of their representations to the portfolio lender and the considerable repurchase risks that come from irregularities. This approach will increase the ability of lenders generally to provide financing to underserved borrowers.

[2] 15 USC 1639(c)(b)(3)

Consumers should not be forced to discern which lenders originate which types of loans. Stratification of the market by establishing different underwriting standards for some lenders and not others only causes unnecessary consumer confusion and lessens competition.

Considering these factors, MBA strongly urges the Bureau to allow all lenders to make as QMs loans with debt to income (DTI) ratios above 43 percent or with balloon payments if the loans are placed in portfolio by the originating lender or sold to a creditor who will hold them in portfolio.

B. Refine the Ability to Repay rule to increase access to credit for all qualified borrowers.

MBA makes additional recommendations for revising the QM rule to increase access to credit for qualified borrowers:

- Expand the Safe Harbor: All loans satisfying QM requirements should be treated as safe harbor loans. At minimum, the QM safe harbor threshold should be increased to 200 basis points over APOR. This change would make safe sustainable QM loans to a greater number of creditworthy borrowers.

- Increase Small Loan Definition: The current fees and points threshold for smaller loans—which for 2015 is set at $101,953—causes a higher proportion of small balance loans to exceed the QM cap. The cap should be increased to $200,000, with a sliding scale up to four points at $150,000, and progressively higher caps for even smaller loans. This change would increase QM lending to moderate-income borrowers who seek loans with smaller balances.

- Broaden Right to Cure for DTI and Other Technical Errors**:** MBA applauds the Bureau for amending the ATR rule to permit the cure or correction of errors where the three percent points and fees limit is exceeded. To encourage lending to the full extent of the QM credit box, the right to cure or correct errors should be extended to DTI miscalculations and other technical errors. This change would further lessen the possibility that understandable conservatism in the process would result in decreased availability of credit.

- Replace the Patch and the Default QM: While the QM patch is essential at this time, it is only a temporary solution for loans with higher DTIs. The basic requirement of a 43 percent DTI to qualify as QM necessitates the use of the unwieldy Appendix Q. MBA urges the CFPB to develop a transparent set of factors, including compensating factors, to define a QM to replace both the patch and the 43 DTI standard, including Appendix Q. Such a standard would comprise workable, flexible underwriting criteria consistent with Dodd-Frank that would not do not inject undue complexity or uncertainty into the process and would qualify the greatest number of creditworthy borrowers for safe sustainable loans.

- Revise the Points and Fees Definition: As currently defined, the QM points and fees calculation includes fees paid to lender-affiliated settlement service providers for services that are not included when the provider is unaffiliated. MBA believes that fees paid to affiliates should be excluded from the points and fees calculation on the same basis as fees to unaffiliated providers. This approach would benefit consumers through greater competition.

C. Explicitly allow lenders to pay lower commission rates for Housing Finance Agency (HFA) loans.

HFA loans are an important source of credit for low- and moderate-income borrowers. HFA programs not only provide lower- and moderate-income borrowers access to credit, but also generally include housing counseling and financial education. However, the assistance provided through these programs is not without costs. Because of robust underwriting and other program requirements, HFA loans are often more expensive to produce.

The LO Comp rule prohibits lenders from using the terms of the transaction (not including loan amount) or any factor that could be considered a "proxy" for a loan's terms to determine loan originator compensation. Because lenders are not explicitly able to pay lower commission rates for HFA products, these loans have become uneconomical for many lenders, especially smaller institutions. While the Bureau has suggested that the LO Comp rule may permit variations in loan originator compensation based on whether a borrower is a low- or moderate-income, lenders and investors are not comfortable with this guidance to vary compensation. MBA therefore urges the CFPB to provide a specific exemption to the LO Comp rule for loans made under HFA programs to promote access to credit.

D. Provide authoritative written guidance.

Rules enacted by federal agencies, such as the CFPB's mortgage rules, cannot cover all situations. The Bureau, has with a few exceptions, followed a policy of only offering non-binding oral guidance. Without authoritative written guidance, creditors will inevitably keep their lending guidelines constrained for fear that they will become the subject of enforcement actions or private litigation. While notice and comment rulemaking is important, a nimble guidance process with stakeholder input is essential. For example, prior to or following issuance of guidance, stakeholders could be afforded an opportunity for comment on the answers with final answers issued thereafter.

In sum, uniform written guidance developed with stakeholders' input that can be relied upon will further fair competition and minimize the possibility of undue liability increasing costs. Most importantly, it will ensure that access to credit for consumers will not be harmed by unnecessary confusion or uneven competition.

IV. Conclusion

MBA appreciates the opportunity to comment on this proposal and the Bureau's ongoing work to address issues with the 2013 mortgage rules. Continued refinement of the rules including key revisions to the QM rule would enhance the ability of the mortgage market to provide safe, sustainable and affordable financing to as many creditworthy borrowers as possible.

Should you have questions or wish to discuss any aspect of these comments further, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or at kmarkison@mba.org; or Joe Gormley, Associate Regulatory Counsel, at (202) 557-2870 or at jgormley@mba.org.

Thank you for your consideration of these views.

Sincerely,

Stephen A. O'Connor

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Senior Vice President Public Policy & Industry Relations