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Re: QRM Review – Credit Risk Retention

The undersigned organizations write to provide observations and recommendations with respect to the review of certain provisions of the Credit Risk Retention Rule[1] issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Finance Agency, and the Department of Housing and Urban Development (collectively, the Agencies).

We would like to thank the Agencies for delaying the Qualified Residential Mortgage (QRM) review until the Consumer Financial Protection Bureau (CFPB) issued final rules with respect to the Qualified Mortgage (QM) framework.[2] Although the CFPB has delayed the timeline by which use of the revised QM General Definition becomes mandatory, market participants have begun to voluntarily adopt the terms of final QM regulation, issued in December 2020.

Following careful analysis of the changes issued by the CFPB in its final QM rule, we strongly support the continued alignment of the QRM and QM frameworks. This alignment ensures that the most competitive mortgage terms are accessible to the broadest

[1] Codified at 12 C.F.R. pts. 43, 244, 373, and 1234; 17 C.F.R. pt. 246; and 24 C.F.R. pt. 267. References in this letter to the Credit Risk Retention Rule are to 12 C.F.R. pt. 43 for simplicity.

[2] We also note that the CFPB has signaled potential future changes to the QM framework, and in this sense, we again will be limited in our ability to accurately assess any impacts of such changes on the QRM standard. Our comments below assume that the current QM framework will remain constant, but this review process must assure consideration of the impacts on QRM stemming from any further changes to the QM regulations. As articulated below, we strongly believe that the alignment of the QM and QRM standards has been successful and should continue. We would urge each of the Agencies to coordinate with the CFPB to ensure that any possible changes to the QM standard that may be considered would not have unintended or deleterious impacts on the QRM standard or the alignment of the two.

segment of QM-eligible borrowers while continuing to promote safe and sound lending practices and strong investor protections.

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In 2014, the Agencies established the equivalency of QRM with QM as defined in section 129C of the Truth in Lending Act (15 U.S.C. 1639c) and regulations issued thereunder, as amended from time to time.[3] The objectives of the QRM framework are to ensure investors are confident in the quality of mortgages underlying securitizations and that borrowers are able to obtain financing for sustainable home loans. A broad coalition of lenders, insurers, real estate professionals, consumer advocacy organizations, and civil rights groups has supported these objectives. In the period since the QRM and QM frameworks have been in place, these objectives have been met, and the mortgage finance system has functioned well. Maintaining the alignment of the QRM and QM frameworks is beneficial for several reasons, many of which were observed and supported by the Agencies in the 2014 Credit Risk Retention Rule.

Investor Protections

The QRM framework exists, in part, to protect investors by exempting only securitizations featuring loans with low credit risk from credit risk retention requirements. For this reason, it is critical that QRM loans not exhibit high rates of delinquency or default. The alignment of the QRM framework with the revised QM framework advances this objective as QM loans are designed to minimize the likelihood of delinquency or default. In 2014, for example, the Agencies observed that loans that meet the QM criteria have a lower probability of default than mortgages that do not – most notably for loans originated near the peak of the market that preceded the 2008 financial crisis.

In December 2020, the CFPB finalized amendments to the Ability-to-Repay/Qualified Mortgage provisions of Regulation Z. The new rule revises the QM General Definition and will replace the GSE Patch and the standalone 43 percent debt-to-income (DTI) ratio threshold with a framework that continues to reinforce strong underwriting, safe product features, and affordability, by imposing a new rate spread cap. The elimination of a stand-alone DTI ratio threshold and associated Appendix Q facilitates a more vibrant market in which consumers maintain strong access to credit as well as appropriate safeguards to ensure their ability to repay. In addition, the product feature limitations of the existing QM framework remain in place to ensure that risky mortgage products do not jeopardize the safety and soundness of the housing market.

The data and analysis published by the CFPB support the fact that loan production under the new QM framework could lead to lower levels of delinquency or default risk. Using data from the National Mortgage Database (NMDB), the CFPB performed delinquency analysis that shows strong evidence that lower early delinquency rates are tied to lower rate spreads across a range of time periods, loan types, measures of rate spread, and

[3] 12 C.F.R. § 43.13(a).

measures of delinquency. This correlation between delinquency rate and rate spread also is consistent with findings from studies published by external commenters in response to the CFPB's proposals.

Data analysis performed, and relied upon, by the CFPB shows that the QRM standard need not be narrower than the standard for the new General QM Definition. Alignment of the QRM and QM frameworks generates strong incentives for responsible lending and borrowing. Loans meeting these standards will assure investors that securitizations exempt from credit risk retention requirements have low likelihoods of delinquency or default.

Borrower Access to Credit

Any narrowing of the QRM standard relative to that of QM has the potential to cause a sharp reduction in borrower access to credit. Because of the strong incentives for issuers to sponsor securitizations that are exempt from credit risk retention requirements, loans that do not achieve QRM status will be more difficult for borrowers to obtain – and are likely to carry higher costs. Low- to moderate-income borrowers, underserved borrowers, and first-time homebuyers, in particular, are likely to be impacted disproportionately if the QRM framework is modified to require higher down payments or tighter credit requirements.

In recent years, relatively stringent mortgage credit standards have led to high-quality lending that presents low credit risk. As a result, credit availability is tight, even for well-qualified borrowers. The most recent Mortgage Credit Availability Index data shows that credit supply is near its tightest level since 2014 – coinciding with the introduction of the QM framework. Alignment of the QRM and QM standards will avoid unnecessary constraints on mortgage credit availability under the prevailing mortgage lending conditions.

Narrowing of the QRM framework also could impede borrower access to the conventional market and inhibit the responsible growth of the private-label mortgage-backed securities (MBS) market. Because Fannie Mae and Freddie Mac are exempt from the credit risk retention requirements only while in conservatorship, it is likely that they would limit their activities to a smaller set of QRM-compliant loans post-conservatorship if the QRM framework is narrowed. Similarly, issuers in the private-label MBS market would be likely to eschew securitizations backed by non-QRM loans due to the costs associated with credit risk retention.

By contrast, preserving alignment in the two standards will support revival of this market, increasing the diversity of housing finance capital sources, making the system more resilient and promoting greater liquidity, while also lowering costs and increasing choices for borrowers. These benefits would be diminished if the QRM standard were narrowed relative to the QM standard.

Absent alignment between the QRM and QM frameworks, QM loans that do not achieve QRM status likely would feature interest rates and fees that are higher than those associated with QM loans that do achieve QRM status. This outcome would segment the market further, reducing incentives for lenders to offer a broad array of QM-compliant loans for which borrowers are determined to have an ability to repay. Such an outcome would run counter to the rationale provided by the CFPB in its determination that the revised QM framework would promote safe and sound lending practices without unduly restricting borrower access to credit.

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We would like to thank the Agencies once again for the opportunity to provide comments on the review of the QRM framework. We firmly believe that alignment between the QRM and QM frameworks facilitates a stable housing market and ensures access to conventional mortgage credit for borrowers across the country, including low- and moderate-income and underserved households, and first-time homebuyers. In addition, alignment will preserve high-quality, empirically sound underwriting, borrower-friendly product features, and robust investor confidence. We look forward to working with the Agencies as they finalize this review, and we will continue to provide support and serve as a resource as work on this issue continues.

Sincerely,

American Bankers Association
Housing Policy Council
Mortgage Bankers Association
National Association of Home Builders of the United States
National Association of REALTORS®
U.S. Mortgage Insurers