



September 16, 2019

*Submitted electronically at regulations.gov*

Comment Intake  
ATR/QM ANPR  
Bureau of Consumer Financial Protection  
1700 G Street, NW  
Washington, DC 20552

**Re: Response to ANPR on the Qualified Mortgage Definition under the Truth in Lending Act** (Docket No. CFPB-2019-0039 or RIN 3170-AA98)

Dear Madam or Sir,

SIFMA<sup>1</sup> is pleased to respond to the CFPB's ANPR on the qualified mortgage definition. We welcome that CFPB has chosen a two-step approach to address this important issue – first, issuing an ANPR to elicit views from market participants and other stakeholders, and then following that with an NPR outlining specific regulatory proposals. This process should provide maximum opportunity for the Bureau to consider its options.

SIFMA recognizes the central role that the QM Patch has played in mortgage lending in recent years, as well as the importance of moving forward with a review of the CFPB's 2013 rules. As CFPB acknowledges, the current framework for QM and its associated income verification requirements are deficient, and it is appropriate for CFPB to take this time to revise and improve upon them as the sunset of the Patch approaches.

We write this letter on behalf of our broker-dealer and asset manager members who are active in the secondary markets for mortgage loans, as buyers and sellers of whole loans, underwriters and issuers of securitizations, and buyers and sellers of mortgage-backed securities. We provide below our comments on some of the issues raised in the NPR.

### **Bright Line Standards**

Regardless of the path the CFPB chooses, SIFMA members believe that the regulations must make it very clear what is a QM, what is not a QM, and what is the path to achieve that QM status. This is important because non-QM loans create additional liability for holders of those loans. Assignee liability, as a general

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<sup>1</sup> SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

matter, has a chilling effect on the willingness of the secondary markets to fund credit creation. We wrote to the CFPB about this in 2012 and believe it is worth repeating today:

*[C]lear QM standards are paramount. Lenders and investors must be able to know at the time of origination whether the loan meets the QM standards. The standards that define QM compliance must be clear, objective, and verifiable. The secondary market for mortgage loans and the securitization markets will require verification of the QM status before a pool of loans is purchased or securitized. Not only must lenders represent and warrant that their lending practices comply with their underwriting guidelines, but also that their lending complies with all applicable laws and regulations, including the ability to repay rules. Subjective compliance standards will require increasingly costly due diligence efforts, will increase repurchase risk, and will reduce the value of loans in the secondary markets. Vague standards for QM could lead to secondary market investors imposing their own more objective requirements well within the bounds of QM to assure compliance with the standards. In other words, if bright lines are not implemented in the final rule, borrowers will pay more for their loans and have a harder time obtaining them. Objective standards will promote the legal certainty that is essential for lenders and their assignees to effectively price the mortgage loans in a manner that creates affordable outcomes for borrowers.<sup>2</sup>*

One reason that the QM Patch has been so prevalent in mortgage underwriting is the relative certainty of compliance that it provides. When a loan receives an approve result from DU or an accept from LP, lenders and subsequent holders can have a high degree of confidence that the loan is indeed a QM, and therefore free from the liability and other issues that may attach to a non-QM loan. On the other hand, one of the major deficiencies of Appendix Q is that it too often does not provide bright-line standards upon which lenders and secondary market participants may depend (e.g., for borrowers with irregular or non-traditional sources of income).

Accordingly, in whatever direction CFPB decides to go with this rulemaking, it should be the outcome that determinations of a loan's status are clear and conclusive.

## **DTI**

SIFMA members generally agree with the CFPB's assessment that DTI is not the best predictor of mortgage success.<sup>3</sup> There are numerous other factors that are also important and/or possibly more predictive, including but not limited to residual income, assets, and LTV.

Whether or not the DTI requirement should be maintained at 43% is an area where we have found a diversity of member views.

- Some members believe that DTI should remain a gating criterion for QM qualification. They believe that a DTI threshold will provide a meaningful guidepost for secondary market investors to understand the underwriting of pool of loans and will size the QM share of the market appropriately. The DTI number is simple and understandable. However, while some members believe the DTI threshold should remain at 43%, others would be comfortable with a higher number such as 45%.
- Other members believe that DTI should be removed from the regulation, and that alternative measures such as an average prime offer rate criteria would serve as a better boundary for the

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<sup>2</sup> See SIFMA's April 30, 2012 comment letter, available here <https://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-the-cfpb-on-qualified-mortgage-regulation.pdf>

<sup>3</sup> See, e.g., ANPR at 22.

QM definition.<sup>4</sup> In their approach, DTI would remain a component of a responsible underwriting, as it is today, however it would no longer be a gating criterion in the rule.<sup>5</sup>

- Other members suggested that CFPB could explore a replacement of the DTI standard with a more appropriate measure, such as a residual income test.

The mixed views we received from members cut across buy- and sell-side institutions. We believe this shows the need for CFPB to engage in significant outreach with market participants prior to publishing an NPR, as it will be important to develop a proposal that addresses as many of the desires of secondary market participants as possible to ensure mortgage credit is funded most efficiently.

### **Income Verification and Appendix Q**

SIFMA members agree with CFPB's conclusion that Appendix Q is not fit for purpose:

*"Appendix Q's methods for documenting debt and income can be rigid, that its provisions for determining what debt and income can be included in DTI calculations can be difficult to apply, and that it does not provide the level of compliance certainty that the Bureau anticipated. Stakeholders have reported that these documentation and determination concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams."<sup>6</sup>*

Indeed, SIFMA has discussed these issues with CFPB staff in previous years. Appendix Q is based on dated manual underwriting standards, is not well-suited to an automated underwriting system (AUS), and does not provide certainty of compliance for many situations. This stands in stark contrast to the Patch, which is enabled through an automated system and generally allows for a yes or no answer for a given loan.

As with the DTI discussion above, SIFMA members have expressed a variety of views on what should be done with Appendix Q. Generally speaking, our members favor approaches that are automatable, replicable, and not subject to judgment when not necessary. The idea that Appendix Q could simply be fixed is viewed as unlikely at best, given that what Appendix Q was built for it not what it is used for today.

- One approach supported by a number of SIFMA members would be for the CFPB to develop a process through which an AUS or other underwriting standards could be officially recognized by the CFPB and set forth as a means to comply with income verification standards. These could include existing frameworks (e.g., FHA, VA) as well as AUS deemed compliant by the CFPB (e.g., one maintained by an AUS provider, a lender's own AUS, or other standards). This process would involve the submission of data and information about the process or standards to the CFPB, review and approval by the CFPB, and some level of publicity for the measures employed by the AUS or underwriting standards. Presumably, there would also need to be a process through which changes to the AUS or other standards would be reviewed by the CFPB.
- Another suggestion put forward was that the CFPB itself should publish a compliance guide for QM and ATR, similar to how the GSEs publish underwriting guides for their loan purchase criteria. If these standards were followed as prescribed, it would be conclusive with respect to QM/ATR compliance. These standards could then be incorporated into a lender's or other AUS and would provide an enhanced degree of transparency and uniformity into the underwriting process.<sup>7</sup>

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<sup>4</sup> See ANPR at 28.

<sup>5</sup> The U.S. Treasury Department recently referenced this in its Housing Finance Reform Plan. See <https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf>, at 38.

<sup>6</sup> ANPR at 24.

<sup>7</sup> In a variation on this, some members would also support the establishment of an SRO to manage this process

The common theme between those two positions is that the income verification process would become automated, as it today with the QM patch. This would provide for certainty of compliance than is not achievable today under Appendix Q and would reduce issues noted earlier in the letter about representations and warranties, among other things. If the CFPB were to choose one of the paths we have written about, or another path not discussed here, we believe that a solution that allows for automated, definitive determinations should be the outcome.

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We appreciate this opportunity to provide input to the CFPB at the start of this very important regulatory process. Redefining QM and associated regulations will form an important part of broader housing finance reform in the U.S. As discussed in this letter, SIFMA places high importance on an outcome that creates bright lines and clear determinations of compliance.

We would be pleased to discuss this issue further at your convenience.

Regards,

A handwritten signature in blue ink that reads "Chris Killian". The signature is written in a cursive, flowing style.

Christopher B. Killian  
Managing Director  
Securitization and Corporate Credit