



March 16, 2020

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

Dear Director Kraninger:

The Housing Policy Council (HPC),¹ Center for Responsible Lending (CRL),² American Bankers Association,³ National Association for the Advancement of Colored People (NAACP),⁴ and Mortgage Bankers Association (MBA)⁵ support your decision to propose a rule to amend the Ability-to-Repay (ATR)/ Qualified Mortgage (QM) regulation at expiration of the Government-Sponsored Enterprise (GSE) Patch, to remove a specific debt-to-income (DTI) ratio and associated references to Appendix Q from the QM definition. In response to the CFPB's Advance Notice of Proposed Rulemaking (ANPR), our organizations submitted separate comment letters and joined with a broad coalition of industry and consumer advocacy and civil rights organizations to provide a strong rationale for this position. That letter outlines our position regarding the framework for replacing the Patch and we are writing to supplement that recommendation with the attached suggested language regarding the documentation and verification of income.

We believe that, with the exception of the 43 percent DTI ratio, Appendix Q, and the GSE Patch provisions, the existing ATR and QM standards are well-developed and provide a solid foundation to further the objectives of the law. From our perspective, the current regulatory text provides an appropriate level of detail regarding the underwriting factors that must be addressed in ATR and the product features and practices required to produce a QM loan.

We would suggest that the Bureau replace the text in section 1026.43(e)(2)(vi) that today establishes the 43 percent DTI ratio and Appendix Q instructions with language stating that, for QM loans, the creditor must document consideration of the DTI ratio or residual income.

¹ HPC is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums.

² CRL is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions.

³ ABA is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$14 trillion in deposits, and extend more than \$10 trillion in loans.

⁴ Founded 1909, the NAACP is the nation's first and largest grassroots-based civil rights organization with over 2,000 volunteer-run branches nationwide. The mission of the NAACP is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons.

⁵ 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.

The attached redline of the regulation highlights this change and offers minor wording suggestions to modify section 1026.43(e)(2)(v).

This replacement standard for section 1026.43(e)(2)(vi), requiring documentation of the creditor's consideration of DTI ratio or residual income, in conjunction with the existing but slightly amended QM mandate that the creditor document and verify the borrower's income and debts under section 1026.43 (e)(2)(v), would serve as an explicit affirmation *that* the borrower's debt and income were taken into account in the underwriting of the mortgage. As such, these standards appropriately reinforce but do not replicate the ATR factors within QM. The ATR provisions of the regulation continue to serve as the prescription for *how* the underwriting is performed and QM simply requires evidence *that* the relevant factors were considered.

At its core, we believe that these simple modifications to the regulation provide a sound and reasonable approach that achieves objectives promoted by many of the organizations that submitted comments in response to the ANPR. Preservation of the existing regulatory construct and text, with surgical removal of the DTI ratio threshold and Appendix Q from QM:

- reflects and reinforces the original statutory framework;
- preserves access to credit;
- retains the sound underwriting standards established in the ATR provisions of the rule, yet permits future improvements as the shift to cash-flow and net income underwriting are perfected;⁶
- retains crucial product feature limitations that promote responsible lending; and
- protects the objective nature of the QM definition, which is necessary for the presumption of compliance with ATR to be conclusive for the subset of QM loans that are eligible for Safe Harbor treatment.

We offer these additional thoughts and proposed regulatory text with an appreciation for the broad array of issues that you are considering, so please do not hesitate to contact us with any questions about the ideas presented here or other components of the regulation for which you would like input. We stand ready to engage with you in any way that you deem helpful and appropriate.

Sincerely,

American Bankers Association
Center for Responsible Lending
Housing Policy Council
Mortgage Bankers Association
NAACP

⁶ ATR establishes sound underwriting parameters but does not prescribe a precise set of rules, an appropriate approach to allow investors, guarantors, insurers, and other risk takers as well as third-party firms who monitor, manage, and/or mitigate risk on behalf of these parties to set the specific terms most suitable for particular products or consumer profiles.

DRAFT Redline of Certain Provisions of ATR/QM

§1026.43 Minimum standards for transactions secured by a dwelling.

....
(e) Qualified mortgages—

....
(2) *Qualified mortgage defined—general.* Except as provided in paragraph (e)(4), (e)(5), (e)(6), or (f) of this section, a qualified mortgage is a covered transaction:

....
(iv) For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using:

(A) The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due; and

(B) Periodic payments of principal and interest that will repay either:

(1) The outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate set forth in paragraph (e)(2)(iv)(A) of this section, assuming the consumer will have made all required payments as due prior to that date; or

(2) The loan amount over the loan term;

(v) For which, at or before consummation, the creditor verifies, and documents consideration of, the following:

(A) The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section; and

(B) The consumer's current debt obligations, alimony, and child support in accordance with paragraphs (c)(2)(vi) and (c)(3) of this section; and

(vi) For which, at or before consummation, the creditor documents consideration of the consumer's monthly debt-to-income ratio or residual income.

Deleted:

Deleted: considers and verifies at or before consummation ...

Deleted: appendix Q and

Deleted: appendix Q and

Deleted: the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of this paragraph (e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined:

(A) Except as provided in paragraph (e)(2)(vi)(B) of this section, in accordance with the standards in appendix Q;¶

(B) Using the consumer's monthly payment on:¶

(1) The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with paragraph (e)(2)(iv) of this section; and¶

(2) Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with paragraphs (c)(2)(iv) and (c)(6) of this section.¶

Excerpts from Official Interpretations

43(e)(2) Qualified mortgage defined—general.

....

Paragraph 43(e)(2)(v).

1. *General.* For guidance on satisfying §1026.43(e)(2)(v), a creditor may rely on commentary to §1026.43(c)(2)(i) and (vi), (c)(3), and (c)(4). In order for a loan to meet the standards of a qualified mortgage under § 1026.43(e)(2), paragraph 43(e)(2)(v) requires that the creditor verifies, and documents consideration of, the factors listed in clauses 43(e)(2)(v)(A) and (B). A creditor documents consideration by maintaining records indicating that the creditor took those factors into account in the underwriting of the loan.

2. *Income or assets.* Section 1026.43(e)(2)(v)(A) requires creditors to verify, and document consideration of, the consumer's current or reasonably expected income or assets. For purposes of this requirement, the creditor must verify, and document consideration of, income and assets in accordance with §1026.43(c)(2)(i) and (c)(4).

3. *Debts.* Section 1026.43(e)(2)(v)(B) requires creditors to verify, and document consideration of, the consumer's current debt obligations, alimony, and child support. For purposes of this requirement, the creditor must verify, and document consideration of, debt in accordance with §1026.43(c)(2)(vi) and (c)(3).

Paragraph 43(e)(2)(vi).

1. *Monthly debt-to-income ratio or residual income.* Section 1026.43(e)(2)(vi) requires a creditor to document consideration of the consumer's monthly debt-to-income ratio or residual income by maintaining records indicating that the creditor took either of those factors into account in the underwriting of the loan. Section 1026.43(e)(2)(vi) does not prescribe a specific monthly debt-to-income ratio or residual income standard with which creditors must comply.

Deleted: consider and verify

Deleted: consider and verify, at a minimum, any income specified in appendix Q. A creditor may also consider and verify any other

Deleted: ; however, such income would not be included in the total monthly debt-to-income ratio determination required by §1026.43(e)(2)(vi)

Deleted: consider and verify

Deleted: consider and verify, at a minimum, any debt or liability specified in appendix Q. A creditor may also consider and verify other

Deleted: ; however, such debt would not be included in the total monthly debt-to-income ratio determination required by §1026.43(e)(2)(vi)

Deleted: *Calculation of monthly payment on the covered transaction and simultaneous loans.* As provided in appendix Q, for purposes of §1026.43(e)(2)(vi), creditors must include in the definition of "debt" a consumer's monthly housing expense. This includes, for example, the consumer's monthly payment on the covered transaction (including mortgage-related obligations) and on simultaneous loans. Accordingly, §1026.43(e)(2)(vi)(B) provides the method by which a creditor calculates the consumer's monthly payment on the covered transaction and on any simultaneous loan that the creditor knows or has reason to know will be made.