



Statement of Debra Still

**On behalf of the
Mortgage Bankers Association**

**House Financial Services Committee
Subcommittee on Financial Institutions and
Consumer Credit**

**“Examining How the Dodd-Frank Act Hampers
Homeownership”**

June 18, 2013

Chairwoman Capito, Ranking Member Meeks and members of the subcommittee, my name is Debra W. Still and I currently serve as President and Chief Executive Officer of Pulte Financial Services, which includes Pulte Mortgage LLC, PGP Title and PCIC Insurance and employs 750 individuals throughout the United States. I am also President and CEO of Pulte Mortgage, a nationwide lender headquartered in Englewood, Colorado, which has helped more than 400,000 homebuyers finance their new home purchases since 1972. Pulte Financial Services is a part of PulteGroup, America's largest homebuilder with operations in 30 states and the District of Columbia.

I appreciate the opportunity to testify again before this subcommittee, this time in my capacity as Chairman of the Mortgage Bankers Association¹ and as a Certified Mortgage Banker (CMB). MBA uniquely represents mortgage lenders of all sizes from the largest federally-chartered institutions to the smallest community lenders who serve the mortgage financing needs of families and neighborhoods throughout the nation.

Background

Your decision to hold a hearing on the residential mortgage lending standards in Dodd-Frank could not be more timely. During the last several months the Bureau of Consumer Financial Protection (CFPB or Bureau) issued the Ability to Repay and Qualified Mortgage Rule (QM) that will profoundly affect mortgage borrowers and those who hope to one day be able to buy a home. The industry is now fully vested in understanding and implementing this rule, building new policies and procedures, re-engineering loan processes, reprogramming mortgage origination systems, and training our personnel before the rule takes effect in January 2014.

In reviewing the Ability to Repay Rule, context is important. Over the past several years, lenders serving homebuyers in America have experienced high levels of uncertainty in the housing markets and in the regulatory landscape.

The good news is we are making progress. By almost any measure, housing is making a recovery. Home starts are up. Home sales are up. Sales prices are increasing in many areas across the country and home affordability remains at historic highs.

¹ ¹The 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, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

While housing is improving generally, research shows that the higher end of the market is fueling growth while the lower end of the market is actually shrinking. Access to credit is clearly constrained with first-time and low-to-moderate-income borrowers unable to qualify for a mortgage.

As anticipated, 2013 marks the final publication of many key Dodd-Frank rules. MBA applauds the CFPB for getting a great deal right and for their deliberative and inclusive approach.

Having the rules in place has eased uncertainty to some degree but concerns persist that certain aspects of the rules — particularly the Ability to Repay rule — will further tighten credit to otherwise qualified consumers. The 3500 pages of new rules introduce new levels of complexity that could force lenders to be even more cautious than they are today. We are experiencing a marked shift in real estate finance – a shift from regulatory uncertainty to regulatory complexity. Given this prospect, we should all be concerned about the cumulative effect of the new rules on the availability of credit to qualified consumers.

To avoid or at least lessen this possibility, there is considerable work to be done.

First, we need to work collaboratively with both the CFPB and Congress to make sure that the new rules are “right” and that they support access to credit.

Second we must also make certain these rules are aligned with each other and with other regulations so that the totality of the rules fosters rather than frustrates the availability of sustainable credit to all qualified borrowers.

Third, and of upmost importance, the industry needs clear guidance from the CFPB and adequate time to implement the rule.

The Ability to Repay Rule and QM

MBA has consistently supported reasonable ability to repay requirements that will prevent a reemergence of the competitive excesses of the housing bubble.

Even though the mortgage industry has implemented some of the most conservative underwriting standards in decades and riskier mortgage products are no longer available, we appreciate the value of embedding sound product and underwriting standards into law to assure consumers are protected going forward. Establishing an ability to repay requirement, along with an unambiguous set of standards in the form of a clear safe harbor, is a reasonable way to accomplish this.

Nevertheless, as this process moves forward, we must be mindful of the fact that these new rules are arriving amidst some of the tightest credit standards in decades. It is crucial that these rules do not unnecessarily exacerbate the situation.

Dodd-Frank requires that a lender may not make a residential mortgage loan unless the lender makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

The law provides steep liability, stiff remedies and severe financial penalties for violations. For example, a mortgage lender who fails to comply with the ability to repay requirement for a hypothetical \$200,000 loan would face liability on the order of:

- (1) Statutory damages of up to \$4,000;
- (2) All loan fees and up to three years of finance charges paid by the consumer, which on an average loan of \$200,000 at 4.5 percent may be approximately \$25,000;
- (3) Actual damages, which could include, for example, the borrower's down payment (e.g., \$20,000 if the down payment was 10%); and
- (4) Court costs and reasonable attorney fees associated with the claim, which could be anywhere between \$26,000 and \$155,000 (depending on how protracted the court proceedings are).

Dodd-Frank also extends the statute of limitations for a claim based on a violation of the ability to repay requirement from one year to three years. The law also allows a consumer to assert a violation as a claim in foreclosure whenever it occurs, even if the claim arises far beyond three years. The claim may be made against any creditor, assignee or holder of the mortgage as well. This "defense to foreclosure" provision is a major factor in driving investors' and lenders' extreme caution on credit standards.

Against the backdrop of this potential liability and with an eye towards how unpredictable litigation can be, Dodd-Frank provided a principled avenue for compliance. Lenders who make QM loans, which under the law cannot have risky features, must be well underwritten and meet other restrictions (including limits on points and fees), will have assurances that their loans meet the ability to repay requirements.

For this reason, great attention was focused on how QM would be defined.

The Rule Must Support Access to Credit

MBA's Overall View of the QM Rule

As I articulated in my testimony last year, MBA arrived at four principles that we believed should guide the completion of the QM:

- First, the QM needs to be broadly defined in order to reach as many borrowers as possible with safe, affordable and sustainable financing.
- Second, the rule must include clear, specific and objective standards, by incorporating unambiguous requirements.
- Third, the QM should provide lenders and borrowers the legal certainty that meeting the standards will provide them a clearly defined safe harbor so that claims against a loan are limited to examining whether or not the loan is a QM.
- Finally, given the QM's massive effect on the existing market, the rule should be designed in a way that avoids unintended consequences.

We appreciate the efforts of the Bureau that, to a large extent, addressed these concerns.

The rule is relatively broadly defined and temporarily offers the choice of either a 43 debt-to-income ratio or eligibility for GSE purchase or agency insurance or guarantee eligibility. Either pathway to QM qualification remains subject to the rigorous requirements and product feature restrictions embodied in Dodd-Frank and the QM rule.

As I pointed out last year, because of the very significant liability under Dodd-Frank, it is not clear whether and to what extent there will be any substantive non-QM lending particularly lending at affordable prices for creditworthy middle-class families. Some believe non-QM loans will be made but only to the most qualified, wealthiest borrowers and kept in institutions' portfolios. Others believe there will be non-QM lending with significant pricing premiums that will raise costs to borrowers, particularly those least able to afford them. Neither of these outcomes alleviate the need for a broadly defined QM that serves as many creditworthy borrowers as possible.

The rule also offers a legal safe harbor for what the Bureau regards as prime QM loans — those with an APR that is less than 150 basis points over a benchmark rate known as the Average Prime Offer Rate (APOR). Loans with an APR that is 150 or more basis points greater than the benchmark rate are given a less conclusive rebuttable presumption of compliance.

The difference between the safe harbor and rebuttable presumption standards is critically important. A safe harbor simply means that if a lender complies with the exact standards embedded in the rule compliance will be presumed and any litigation will be confined to whether or not the loan is in fact a QM. A safe harbor is not in any way a "pass" from liability for lenders, nor does it deprive consumers of an opportunity for court review. Under either a safe harbor or a rebuttable presumption of compliance, a borrower can seek judicial review of an alleged violation, but in the former instance the review is focused on whether the rule's standards were met.

Under a rebuttable presumption of compliance, however, the scope of the inquiry is potentially far more wide-ranging, with significant variations from one court to another on how the presumption is applied, including when and how extrinsic evidence may be considered beyond the standards. Such an inquiry is more open-ended, unpredictable and far more costly to defend.

Although we appreciate that the Bureau ultimately chose to establish a safe harbor for most of the market, we think it would be beneficial for the CFPB to establish a safe harbor for all loans that meet QM standards.

Given that the CFPB has chosen to bifurcate the QM protections, we believe that the safe harbor should be broadened to cover a larger share of the high quality, well underwritten QM loans that are being made today. In addition, with respect to the rebuttable presumption standard, the CFPB should provide clearer guidance regarding how consumers can rebut the presumption of compliance based on a lack of residual income or how lenders can defend a loan based on a sufficient payment history. Further explanation would facilitate the availability of credit to qualified borrowers whose QM loans do not meet safe harbor standards.

Facilitating Credit to Creditworthy Low and Moderate Income Borrowers

Dodd-Frank limits the points and fees that can be charged to borrowers for a QM loan. The statute specifies 3 percent of the loan amount as the limit but permits adjustments for smaller loans.

Under the final rule in addition to what is traditionally included in points and fees, the definition of points and fees also includes:

- (i) charges to lender affiliated (but not unaffiliated) title companies,
- (ii) compensation paid to loan originator companies, such as mortgage brokerages,
- (iii) amounts for insurance held in escrow and
- (iv) loan level price adjustments in the form of additional closing costs.

MBA believes this definition is overly inclusive and will create competitive disadvantages for various business models, reducing choice and ultimately harming consumers. The effects of the overly inclusive points and fees definition will be particularly severe for low-balance loans to low and moderate income borrowers.

Smaller Loans

Under Dodd-Frank, the CFPB has broad discretion to adjust the points and fees limit so that lenders making smaller loans do not exceed the points and fees trigger. The smaller a loan balance, the more difficult it is to meet the 3 percent limit on points and fees.

The QM rule defines a smaller loan as a loan under \$100,000 and only permits an increase in the points and fees limit for loans below that amount. However, the average loan size currently is \$220,000.

Consider a \$150,000 loan, which is typical in many markets in the country. Applying a 3 percent limit to such a loan, only \$4,500 would be available to cover fees reflecting the costs of the lender, compensation to a mortgage brokerage, some escrowed amounts and all third party fees of affiliates including title insurance and title services.

Based on this example, many loans are likely to exceed the 3 percent limit and fail to qualify as QMs (even though they meet all other QM requirements). Perversely, the cap on points and fees and the threshold for smaller loans may result in QMs being unavailable to many low and moderate income borrowers, a result we believe is contrary to the statute's purpose.

We believe there are good alternatives to solve this problem, including:

- Removing affiliated title fees, compensation to mortgage brokers and escrow amounts from the points and fees calculation by passing H.R. 1077, the Consumer Mortgage Choice Act; or
- Increasing the dollar amount defining small loans.

Fees of Affiliates

The rule includes in the points and fees calculation charges paid to an affiliate of the lender, including title charges, but excludes charges paid to an unaffiliated company. The rationale behind this decision is not clear and we believe it will end up raising prices and undermining consumer choice.

Some lenders choose to affiliate with title and other service providers to ensure that services are efficient, charges are as estimated and the consumer experience from loan application to closing is seamless, predictable and positive for the consumer. National consumer surveys demonstrate that consumers who take advantage of the one-stop shopping that affiliated businesses report a satisfactory home purchase experience.

Title and title related services are the largest third party settlement cost. Affiliated providers offer services that are competitive in cost with those of unaffiliated providers. The fact that affiliated providers attract business from non-affiliated lenders supports this fact. As might be expected, studies have shown that when affiliates have been excluded from the market, title insurance charges have risen.

In all cases, consumers are free to choose not to use affiliated providers. The Real Estate Settlement Procedures Act (RESPA) requires a clear disclosure of affiliated relationships and their cost and does not permit a consumer to be required to use an

affiliated entity. There are clear penalties for forcing a consumer to use a particular affiliate or providing improper inducements to persuade a consumer to do so.

Concerns that lenders may augment their fees through the charges of affiliated companies are not valid. Title insurance premiums, and in many cases fees for title services, are regulated. Forty-four states and the District of Columbia require that title premiums be set by the state, approved by the state, or filed with the state (23 states also include title examinations and searches).

In short, there is no reason for Congress to deny consumers the ability to use affiliated service providers or make it more expensive to do so.

Compensation to Loan Originators from Creditors

We appreciate that with the issuance of its most recent revisions to the QM, the Bureau has modified the rule to exclude from points and fees compensation paid by a lender to its individual employee loan originators. Nevertheless, MBA continues to object to the rule's inclusion of compensation paid by lenders to entities such as community banks, credit unions, local independent businesses and others that broker mortgage loans.

Consumers today obtain the financing they need from lenders with a range of business models. Some consumers use creditors who employ and compensate their own loan officer originators. Others use entities acting as mortgage brokers who may be compensated by wholesale lenders for their origination services. A combination of business models and varying market conditions determine whether consumers may pay some of these costs through direct fees or through their interest rates.

Paying loan originators to steer a borrower into a higher rate or otherwise unfavorable loan has been prohibited under a Federal Reserve rule the CFPB now enforces. The risk of steering consumers to higher cost loans also has been eliminated through these rules, CFPB enforcement powers and the significant new liability provisions. Finally, competition ensures that the costs of loans to consumers through both the retail and wholesale channel are essentially the same.

Under the QM, if two consumers get the same loan, one from a broker and the other from a retail lender, the brokered loan could exceed the points and fees trigger, while the retail loan would be treated as a QM. This perverse result means that the consumer would lose the ability to choose between two loans, from different businesses, that are essentially identically priced.

Notably, for many moderate income borrowers – particularly those with smaller loans or in areas where credit has been scarce such as in rural and certain urban areas – entities offering brokered loans have proven to be the best sources of needed credit. The CFPB's continued discrimination against commissions to entities that broker loans will make these services far less feasible, depriving many consumers of the ability to obtain mortgage financing.

We believe Dodd-Frank was intended to ensure consumers receive sustainable loans, not to pick winners and losers among business models and, as a result, deprive consumers of credit.

Escrow Amounts

Dodd-Frank is ambiguous regarding whether amounts paid to lenders at closing and deposited into an escrow account for the payment of insurance and taxes also are included in the points and fees calculation.

We urge the CFPB to make clear that amounts held for escrow are excluded from the 3 point QM cap.

There is no sound public policy rationale for these fees to be included. Amounts for insurance and taxes are not retained by the lender or its affiliates; they are paid to insurance companies and governmental entities. Additionally, under RESPA, amounts held in escrow that exceed specified limits are returned to the consumer.

A Solution: H.R. 1077, the Consumer Mortgage Choice Act

MBA has repeatedly urged the Bureau to amend the definition of points and fees to exclude affiliated title fees and clarify that loan originator compensation from lenders to brokerages and escrowed amounts be excluded from the calculation for purposes of applying the 3 percent limit.

Despite our belief that the CFPB can make these revisions under existing law, we strongly urge Congress to pass H.R. 1077, the Consumer Mortgage Choice Act. This bipartisan legislation was introduced by Representatives Bill Huizenga, David Scott, Ed Royce, and William Lacy Clay, and cosponsored by over 40 members of the U.S. House of Representatives. The bill addresses each of these items by clearly excluding them from the 3 point QM cap.

Raising the Smaller Loan Threshold

The QM rule provides that loans will be subject to a higher points and fees cap only if the loan amount is less than \$100,000. The \$100,000 cutoff is insufficient and will deny affordable mortgage credit to families who take out lower balance loans. Smaller loans are particularly a feature of rural and underserved communities.

Under the CFPB's final rule, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

- (A) For a loan amount greater than or equal to \$100,000 (indexed for inflation): 3 percent of the total loan amount;

- (B) For a loan amount greater than or equal to \$60,000 (indexed for inflation) but less than \$100,000 (indexed for inflation): \$3,000 (indexed for inflation);
- (C) For a loan amount greater than or equal to \$20,000 (indexed for inflation) but less than \$60,000 (indexed for inflation): 5 percent of the total loan amount;
- (D) For a loan amount greater than or equal to \$12,500 (indexed for inflation) but less than \$20,000 (indexed for inflation): \$1,000 (indexed for inflation);
- (E) For a loan amount less than \$12,500 (indexed for inflation): 8 percent of the total loan amount.

These amounts are to be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index.

There is broad discretion under Dodd-Frank for the CFPB to adjust the 3 percent limit on points and fees further, and MBA has recommended such an adjustment to the Bureau. However, at this writing, it does not appear the CFPB is prepared to address concerns about small loan access. Consequently, MBA would support modification of H.R. 1077 to increase the small loan threshold to \$200,000 and increase the points and fees limit for loans falling under it to 4 percent. This approach would solve the problem of smaller loans becoming unavailable or more costly to low and moderate income families.

Right Sizing the APR/APOR Definitions to Extend QM Credit to Creditworthy Borrowers

MBA believes that most lenders and mortgage investors, at least for the immediate future, will confine themselves to QM safe harbor loans. Importantly, these loans will come with the most favorable, affordable rates. QM rebuttable presumption loans will be more challenging and costlier simply because the risks are greater.

Under the rule, only mortgages where the APR is less than the 150 basis points over the benchmark APOR qualify for the QM safe harbor. Having analyzed the methodology underlying the determination of the APOR and the components of the points and fees test, an increase in the spread to 200-250 basis points for all loans is warranted.

The APOR is calculated based on the Freddie Mac Primary Mortgage Market Survey (PMMS). In recent quarters, the PMMS has fallen well below MBA survey rates, at times by as much as 20 basis points. At least two-thirds and possibly as much as 80 percent of the rate quotes that are included in the PMMS are for purchase loans. However, purchase loans are typically quoted at lower mortgage rates than those for refinances, with the spread between the two ranging up to 25 basis points for some lenders. This causes the PMMS to be systematically biased against refinance mortgages. This bias is particularly troublesome in markets like today's, where approximately 70 percent of mortgage applications and a similar percentage of mortgage originations are for refinance loans.

In today's market, if refinance loan rates are benchmarked against an APOR based on the Freddie Mac PMMS as in the CFPB's rule, it can be anticipated that a large number of these refinance loans could exceed the QM's 150 basis points limit for the safe harbor even if they met exactly the same standards as purchase loans that fell within the spread and were being offered at prevailing rates.

There are also issues with the applicability of a particular APR-APOR comparison to some of the loan products currently being offered. APORs are calculated taking into consideration whether the rate is fixed or adjustable, lien status, and the length of the loan term. There is a significant weakness in the comparability of APORs for ARM loans because they are not necessarily calculated the same way. For instance, if the APR is calculated using an initial rate that is higher than the fully-indexed rate, the APOR should be calculated the same way. Also, if the APR is calculated using the greater of the initial rate or the fully-indexed rate using the maximum margin the APOR should be calculated the same way.

Finally, there is an additional methodological problem with the PMMS around 20-year loans. These loans are compared to survey rates for 15-year loans, which tend to have significantly lower rates. Twenty year maturities tend to track 30-year rates more closely, leading to the result that many common 20-year loans could exceed the 150 basis points over APOR safe harbor definition simply due to a fault with the underlying APOR calculation, not any feature or aspect of the loan.

While these issues are significant, PMMS still provides a unique data set stretching back decades that could be compromised by methodological changes today. As I have testified, however, we believe lenders will be extremely wary of originating loans that fall outside of the safe harbor for the foreseeable future following the rule's implementation. For these reasons, rather than completely reworking the PMMS or seeking to establish a new survey, MBA believes the CFPB should resolve these issues by adjusting the spread which defines safe harbor and rebuttable presumption QMs.

Accordingly, the safe harbor for all loans should extend to APRs that are 200-250 basis points over their comparable APOR. This is a better solution than introducing a variety of disparate calculations for different products that will increase regulatory burden and confusion. The CFPB itself has repeatedly noted the safe harbor does not provide immunity from borrower claims and its expansion to account for infirmities in the APOR calculation is appropriate.

Clearer Guidance on Rebuttable Presumption QMs to Facilitate Lending

Even if the points and fees and APOR issues are fixed as we suggest, MBA believes additional guidance from the Bureau is necessary for the market to provide reasonably priced rebuttable presumption QMs.

MBA appreciates that the Bureau provided some additional guidance in its final rule in this area. Specifically, the rule provides that consumers may show a violation and rebut

the presumption of compliance for a QM where the APR exceeds the APOR by 150 bps or more by showing that, at the time the loan was originated, the consumer's income and debt obligations left insufficient residual income or assets to meet living expenses.

Guidance accompanying the rule also notes that the longer the period of time that the consumer has demonstrated actual ability to repay the loan by making timely payments, without modification or accommodation, after consummation or, for an adjustable-rate mortgage, after recast, the less likely the consumer will be able to rebut the presumption based on insufficient residual income.

While these points are useful, it would be far more useful in facilitating efforts to encourage lenders to originate rebuttable presumption loans if there were clear guidance about what is meant by residual income and what is meant by a good payment history. For instance, "residual income" can be calculated using Department of Veterans Affairs or several other standards. "Good payment history" is a vague and subjective standard without definition.

MBA has asked the Bureau to provide further guidance in this area and the Bureau has indicated it will not do so, urging instead that lenders use common sense to determine the sufficiency of residual income. While we agree with the CFPB that common sense is a critical part of any underwriting decision, it is not always the standard followed by counsel when an action is brought. Therefore, to give lenders and investors greater legal certainty, guidance is essential if QM rebuttable presumption loans are to be made in great numbers across the spectrum of qualified borrowers.

The Rules Must Be Aligned With Each Other

HUD's New Disparate Impact Rule Under the Fair Housing Act

HUD's recently finalized Discriminatory Effects or disparate impact rule under the Fair Housing Act typifies the need for the CFPB's ATR/QM rule to be aligned with other federal regulations.

HUD's rule expressly provides a legal basis for liability under the Fair Housing Act for a facially neutral mortgage lending or servicing practice that has a disparate impact or "discriminatory effect" upon a protected class even in the absence of any intention to discriminate.²

Yet rules implementing Dodd-Frank, including the ATR/QM rule and the forthcoming risk retention rule, will in fact tighten credit standards through facially neutral requirements and can be expected to lead to disparate outcomes for some categories of borrowers. Requirements for the QM, for example, include a 43 percent debt-to-income requirement or eligibility for Fannie Mae and Freddie Mac purchase or guarantee.

² 24 C.F.R. § 100.500.

HUD has issued no guidance on whether and to what extent a lender's policies in making only QM loans, or taking similar actions, in compliance with the ATR/QM requirements amounts to "legally sufficient justification" or business necessity that would avoid liability. Similarly, there is little guidance on assessing less discriminatory alternatives under the rule's burden shifting test in the context of complying with other federal requirements.

We support prohibition of illegal discrimination in mortgage lending under the Fair Housing Act. And while we have questioned the legal foundations underlying the disparate impact theory under the Fair Housing Act, if this rule is to apply, it is essential that it offer clarity on how the rule interacts with the ATR/QM rule and other government requirements.

On June 4, MBA, several other financial trade associations, and the U.S. Chamber of Commerce all wrote to CFPB Director Cordray and HUD Secretary Donovan setting forth these concerns and urging written guidance that makes clear that a lender will not be subject to disparate impact liability based on specific policies undertaken to avoid liability under the Dodd-Frank rules. A lack of guidance in this area will create a regulatory double bind for lenders and ultimately result in higher prices to account for risk and less available credit for consumers.

The Ability to Repay Rule's QM Should Be the Same as the Risk Retention Rule's Qualified Residential Mortgage (QRM)

Another key piece of aligning the rules in MBA's view is aligning QM and QRM definitions.

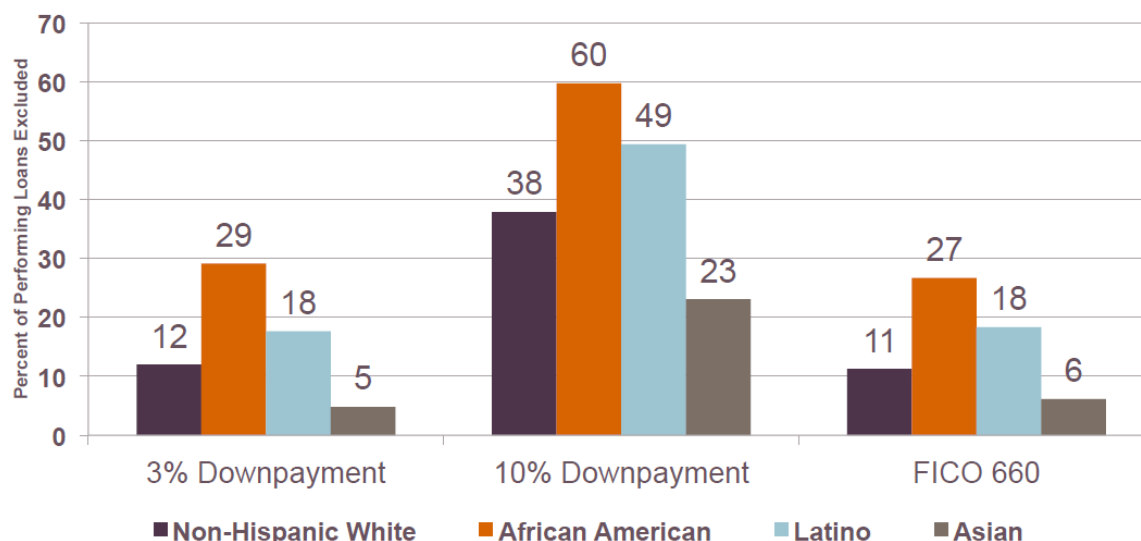
While the QM is the responsibility of the CFPB and the QRM is the joint responsibility of six financial regulators, excluding the CFPB, both provisions have at their heart the same objective. One seeks to outline the design of a sustainable mortgage as a means of satisfying the ability to repay requirements and the other provides an exception to the requirement for risk retention. Notably, Section 941 of the Dodd Frank Act, which establishes the QRM exemption, also requires that the QRM definition be no broader than the definition of QM.

Considering these points, MBA shares the view of an array of stakeholders that the definitions should be synchronized.

Regrettably, however, the QRM proposal issued in 2011 established the QRM in a manner that would serve an extremely narrow segment of the mortgage market for which few middle income families would be eligible. Unlike the QM, the QRM proposal contained a 20 percent down payment for purchase loans and even higher equity standards for refinances. In addition to these standards, the QRM proposal included minimum debt-to-income requirements that were far tighter than those in the marketplace. The proposal engendered a negative reaction from virtually every stakeholder in the consumer advocacy, lending and real estate communities.

Increasing Downpayments and Capping Credit Scores Will Disproportionately Impact Minorities

Percent of performing loans excluded from QRM mortgage market, alternate LTV and FICO definitions, by borrower race/ethnicity, 2004-2008 originations



Source: Roberto Quercia, Lei Ding, and Carolina Reid (2012). *Balancing Risk and Access: Underwriting Standards for Qualified Residential Mortgages*, Center for Community Capital Research Report, January 2012.



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Since the QRM rule was proposed, the QM rule has been finalized. While we have concerns that are discussed extensively above, we believe both definitions should be based on the QM.

As finalized, the QM definition provides strong underwriting, documentation and product standards that will demonstrably lower the risk of defaults consistent with the statutory requirements for the QRM. At the same time, the QM definition precludes the riskier features and products that likewise should be ineligible for QRM treatment. Finally, it does so without restricting credit to low- and moderate income families who no matter how worthy their credit lack the wealth for significant down payments.

There is no need for two different definitions of a sustainable loan. In fact, such variations will only increase costs and confusion to the industry and consumers. Aligning the QRM and QM standards would ensure that strong incentives for safe and sound lending are in place, while inviting the return of private capital and lower mortgage rates to the widest array of qualified families.

FHA and QM

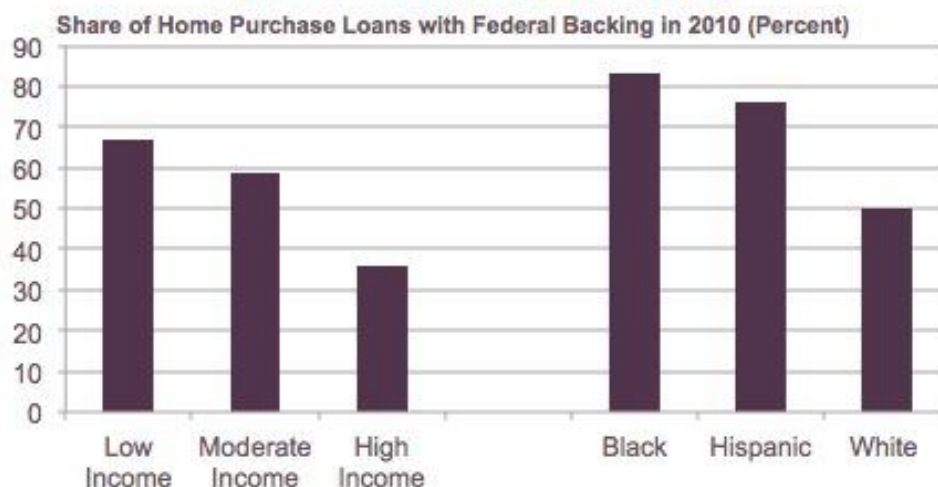
The QM encompasses government loans including FHA loans. The CFPB's QM rule will govern FHA loans until FHA writes its own QM regulation, which is expected within the next several months.

Consumers would be better served if QM safe harbor loans were made available to more creditworthy borrowers by adjusting the APOR benchmark upward to 200-250 basis points. The rule's 150 basis points benchmark is particularly troublesome for FHA loans.

FHA's upfront mortgage insurance premium (MIP) has recently been increased. The MIP is included in the APR and consumes a substantial amount of the 150 basis points. Specifically, analysis from a major FHA lender suggests that the FHA's MIP changes will add 40 to 70 basis points to FHA APRs, depending on loan amount and LTV. This problem with the benchmark is further exacerbated by the fact that the PMMS underlying the APOR only includes conventional not government loans.

If the threshold is not at least expanded — and we urge it be expanded for all loans — the availability of FHA credit to first-time, minority, and low and moderate income borrowers will be jeopardized. The importance of FHA lending to underserved populations is depicted below:

What Happens to FHA is Especially Important to The Fledgling Recovery



Notes: Federally backed loans include FHA/VA and USDA Rural Housing loans. Low income is defined as less than 80 percent of area median income (AMI), moderate income is between 80 and 120 percent of AMI, and high income is above 120 percent of AMI. Black and white householders are non-Hispanic; Hispanics may be of any race.
Source: JCHS tabulations of 2010 Home Mortgage Disclosure Act data.



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For these reasons, it is vital that FHA's forthcoming QM rule include appropriate triggers for QM loans. In the interim, until FHA's QM rule takes effect, we hope Congress will urge the CFPB to adjust the metrics so FHA loans are not treated as rebuttable presumption QM loans.

Guidance and Time to Implement the Rules

As I indicated, implementing the ATR/QM rule along with the other rules issued in January is an enormous task that includes developing new policies and procedures, reengineering loan application and origination processes, building new systems and audit protocols, and training employees, to name just some of the many steps.

To aid in our work, the CFPB's efforts to provide implementation guidance are essential. In this regard, we appreciate that the Bureau has assigned an experienced professional to lead its implementation process and that Bureau representatives have participated in key industry conferences to facilitate stakeholder understanding of the rules. We also appreciate that the CFPB is consulting with lenders, technology providers and others to help operationalize the rules.

Going forward, we urge that questions be answered in writing and publicized widely. This will allow for standard or frequently requested interpretations to be widely known and clearly understood.

Finally, it is imperative that the CFPB be encouraged to make further refinements to the QM rule during the next few months. There are several areas, including the points and fees calculation, the small loan limits and the APOR/APR spread that should be addressed further.

We recognize there is concern at the Bureau about extending compliance deadlines beyond January 2014. We have, however, urged that the Bureau exercise its exemption authority as needed to provide additional time for compliance.

We urge Congress to encourage such an action by the CFPB as needed. Rigid adherence to time limits should not be allowed to dictate implementation if it will frustrate the interests of the consumers that the limits are designed to protect. The stakes are simply too high.

Conclusion

We appreciate the efforts of the subcommittee to examine these enormously important regulations. No matter how well intentioned these rules may be, we remain concerned that the ATR/QM rule harms competition and does not yet ensure credit opportunities to all qualified borrowers.

We urge your support of H.R. 1077 to revise the point and fees provisions and to adjust the small loan limits as needed.

I look forward to your questions. I also look forward to continuing to work with this subcommittee to ensure that our nation has a vibrant mortgage market for as many qualified borrowers as possible, for generations to come.