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**United States Senate**  
COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

September 17, 2019

GREGG RICHARD, STAFF DIRECTOR  
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The Honorable Kathleen Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G St. NW  
Washington, DC 20552

Dear Director Kraninger:

We write regarding the Consumer Financial Protection Bureau's (CFPB, or Bureau) Advance Notice of Proposed Rulemaking on the Qualified Mortgage (QM) and Ability to Repay (ATR) rule under the Truth in Lending Act.

We are encouraged that the Bureau is examining the state of the mortgage market and the impact that changes to existing regulations will have on both access to credit and consumer protection. As you proceed in reexamining the QM regulation, we urge you to consider the letter and intent of the ATR and QM statutory requirements to ensure that: (1) borrowers maintain at least the same level of access to responsible, affordable mortgage credit that they have today; and (2) all mortgage loans are made based on a demonstrated ability to repay analysis that relies on documented and verified income and is itself documented and subject to examination by the Bureau and other regulators.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the ATR and QM standards to address lenders' underwriting failures that devastated consumers and communities and were at the heart of the financial crisis. For more than a decade, lenders steered families into loans with predatory features and did limited or no review of whether the loan was affordable for the borrower.<sup>1</sup> As was well documented by the Bureau and the Financial Crisis Inquiry Commission, these loans defaulted at rates of up to 60 percent<sup>2</sup> and caused irreparable harm for millions of families.<sup>3</sup> Predatory loans were particularly targeted to minority communities and minority borrowers,<sup>4</sup> and minority households have fallen even further behind

<sup>1</sup> See "Curbing Predatory Home Mortgage Lending," HUD-Treasury Task Force on Predatory Mortgage Lending, June 2000, available at <https://archives.hud.gov/reports/treasrpt.pdf>; see also "The Financial Crisis Inquiry Report," Financial Crisis Inquiry Commission, February 25, 2011, pgs. 75-80, available at <https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

<sup>2</sup> "Ability-to-Repay and Qualified Mortgage Rule Assessment Report," Bureau of Consumer Financial Protection, January 2019, available at [https://files.consumerfinance.gov/f/documents/cfpb\\_ability-to-repay-qualified-mortgage\\_assessment-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf).

<sup>3</sup> "The Financial Crisis Inquiry Report" at pg. 402. Subsequent reports from market analysts, including CoreLogic, put the number of completed foreclosures in the 10-year period following the crisis at nearly 7.8 million. See "United States Residential Foreclosure Crisis: Ten Years Later," CoreLogic, March 2017, available at <https://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-10-year.pdf>.

<sup>4</sup> "Curbing Predatory Home Mortgage Lending."

non-Hispanic white households in both wealth and homeownership since the crisis.<sup>5</sup> ATR gave regulators and consumers the tools to hold lenders accountable for reckless and predatory lending.

The Bureau's final rule implementing ATR and QM created three ways that lenders could comply with the law, including two types of QM loans – loans where lenders were presumed to comply with ATR but could still be held accountable in court, and loans where the presumption of ATR compliance was conclusive, leaving borrowers no legal recourse. As part of its QM rule, the Bureau created a temporary “QM patch” which provided full QM liability protection for loans made or backed by federal agency lenders, guarantors, and insurers and for loans eligible to be guaranteed by Fannie Mae and Freddie Mac (the government-sponsored enterprises, or GSEs), even if those loans did not meet the regulatory QM debt-to-income (DTI) threshold. The Bureau set the QM patch's expiration for January 2021, based on the forecast that the mortgage market would by then return to its pre-crisis state.

That forecast has not come to pass. In its 2013 final rule, the Bureau stated its belief that a “robust and sizeable market” for non-QM loans, including loans that did not meet QM's DTI requirements, would develop.<sup>6</sup> Many in Congress shared that belief. But as the Bureau noted in its 2019 Assessment Report, “a vibrant primary and secondary market for non-QM loans was a goal of the Rule, but does not yet exist” and it is possible “that this market might not exist” even if the definition of QM is narrowed.<sup>7</sup> As a result, the Bureau acknowledges, it is possible that the conventional mortgage market will not serve creditworthy borrowers whose loans currently receive QM status and would not if the QM patch expired.<sup>8</sup>

As part of its Advanced Notice of Proposed Rulemaking (ANPR), the Bureau has stated that it will not extend the QM patch. Based on the CFPB's own analysis, if lenders remain unwilling to originate loans for average families without full liability protection,<sup>9</sup> this could further restrict access to credit for borrowers of color, who represent a disproportionate share of QM patch loans and remain underserved by conventional mortgage credit.<sup>10</sup> Further restricting borrowers' access to affordable mortgage credit that is properly underwritten was not the intent of the ATR or QM

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<sup>5</sup> “Wealth inequality has widened along racial, ethnic lines since end of Great Recession,” Pew Research Center, December 12, 2014, available at <https://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>; “2018 State of Hispanic Homeownership Report,” National Association of Hispanic Real Estate Professionals, available at <https://nahrep.org/downloads/2018-state-of-hispanic-homeownership-report.pdf>.

<sup>6</sup> “Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z),” 78 FR 6407, January 30, 2013, available at <https://www.federalregister.gov/documents/2013/01/30/2013-00736/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z>.

<sup>7</sup> “Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z),” 84 FR 37155, July 31, 2019, available at <https://www.federalregister.gov/documents/2019/07/31/2019-16298/qualified-mortgage-definition-under-the-truth-in-lending-act-regulation-z>.

<sup>8</sup> *Id.*

<sup>9</sup> “Ability-to-Repay and Qualified Mortgage Rule Assessment Report” at pg. 150.

<sup>10</sup> For example, the Urban Institute's analysis shows that the proportion of borrowers of color receiving loans with greater than 43 percent DTI relative to the number receiving loans at or below 43 percent DTI is far higher than such a proportion for white borrowers. See “New Data Confirm the Urgency of Addressing the Expiration of the GSE QM Patch,” available at <https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch>. Furthermore, people of color have far lower homeownership rates than non-Hispanic whites. See “Quarterly Residential Vacancies and Homeownership, Second Quarter 2019,” U.S. Census Bureau, July 25, 2019, available at <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

statutory provisions, nor should it be the intent of the Bureau. The Bureau should instead use this ANPR as an opportunity to ensure the ATR and QM regulations facilitate a mortgage market that provides access to safe, sustainable mortgage credit for all creditworthy borrowers.

As you consider amending the existing QM rule, the Bureau must not undermine the elements of the rule that have made it effective: prohibitions on unsustainable product features and a verifiable demonstration at loan origination that the lender has evaluated the borrower's ability to repay their loan. The product restrictions for QM loans that were established by statute and regulation addressed many of the loan features that were most prevalent in predatory loans in the years leading up to the crisis and that were most highly correlated with loan default. These features, including negative amortization, excessive points and fees, and, in some cases, balloon payments, are prohibited for most QM loans today and should remain so.

The Bureau must also retain a requirement that lenders establish that they have verified an individual borrower's ability to repay the loan prior to loan origination for all loans. This is a fundamental principal of sound underwriting. Safe loan features and reasonable loan pricing relative to market rates are critical components of sustainable lending. But without verifiable underwriting, they are insufficient to ensure that a borrower can afford the loan. As the financial crisis demonstrated, lenders' failure to consider a borrower's financial circumstances is dangerous for the consumer and the lender.

We urge you to adopt a QM regulation that is consistent with the housing needs of families and that you fulfill Congress's intent that lenders conduct verifiable underwriting of every mortgage loan.

Sincerely,

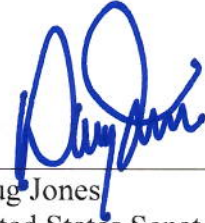


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