NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org
National Association of Federally-Insured Credit Unions

July 28, 2017

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G St., NW
Washington, D.C. 20552

RE: Request for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment (Docket No. CFPB-2017-0014)

Dear Ms. Jackson:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation’s federally-insured credit unions, I am writing to you in regard to the Consumer Financial Protection Bureau's (CFPB or Bureau) Request for Information on the Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule Assessment. NAFCU and its member credit unions are troubled by the growing cost of mortgage lending due to the ATR/QM Rule as well as the adverse effect the rule has had on credit unions' origination volumes, profitability, and member satisfaction. The rule has forced some credit unions to increase their staff and has constrained their capacity to provide non-conforming loans, which has hurt credit unions' ability to provide financial services to the underserved populations that need it the most. NAFCU has also gathered feedback regarding specific provisions of the rule that the CFPB should reevaluate.

General Comments

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) enacted new provisions regarding the origination and servicing of consumer mortgages, and those provisions were implemented by the CFPB in its 2013 ATR/QM Rule under the *Truth in Lending Act* (Regulation Z). The ATR/QM Rule prohibits a creditor from making a mortgage loan without first engaging in a reasonable and good faith determination of the consumer's ability to repay the loan, including mortgage-related obligations. The ATR/QM Rule also creates a class of "qualified mortgage" loans that are presumed to comply with the ATR requirements. QM loans carry certain restrictions on product features and the total points and fees payable in connection with a QM loan must not exceed a certain percentage of the loan amount. There are several different categories of QM loans, including "Temporary GSE QM" loans, which are those loans that are eligible to be purchased by either Fannie Mae or Freddie Mac (the GSEs). This category of loans will, however, terminate at the earlier of (1) the end of the GSEs conservatorship, or (2) January 10, 2021.

Section 1022(d) of the Dodd-Frank Act requires the CFPB to conduct an assessment of any significant rule's effectiveness in meeting the purposes and objectives of Title X of the Dodd-Frank Act, as well as the specific goals stated by the CFPB, and publish a report of the assessment no later than five years after the rule's effective date. Before publishing the assessment report, the Bureau must seek public comment on suggestions for modifying, expanding, or eliminating the significant rule.

The Bureau has determined that the ATR/QM Rule is a significant rule under Section 1022(d) of the Dodd-Frank Act. Accordingly, it has planned to conduct an assessment of the rule and intends to examine the impact of major provisions of the rule on mortgage costs, origination volumes, approval rates, and subsequent loan performance. The CFPB will evaluate changes in creditors' underwriting policies and procedures made in connection with the rule and which may affect consumer outcomes. The Bureau will also evaluate the following major provisions of the rule: (1) the ATR requirements, including the eight underwriting factors a creditor must consider; (2) the QM provisions, especially the debt-to-income (DTI) threshold, the points and fees threshold, the small creditor threshold, and the Appendix Q requirements; and (3) the applicable verification and third-party documentation requirements.

NAFCU and its member credit unions request that the CFPB very carefully assess the effect the ATR/QM Rule has had on the credit union industry. NAFCU also requests that the CFPB reconsider the expiration of the Temporary GSE QM category and make this category a permanent QM category. Additionally, the CFPB should provide further clarifications or modifications to the DTI threshold and points and fees threshold. Such revisions are important to ensuring that credit unions' ability to provide loans and services to their members is not compromised and their access to the secondary mortgage market is not diminished.

ATR/QM Rule Has Increased Costs for Credit Unions

The ATR/QM Rule is yet another instance of the CFPB's one-size-fits-all approach to rulemaking causing counterproductive and unintended consequences. In response to the rule, some credit unions have been forced to stop their mortgage operations altogether because they could not afford to take on the significantly higher compliance burden. Others simply stopped offering non-QM loans or greatly reduced their origination of non-conforming loans. In fact, NAFCU's 2016 Annual Report on Credit Unions indicated that roughly a third of all respondents stopped originating non-QM loans for fear of violating the ability-to-repay requirement and facing legal liability. Another roughly 17 percent of respondents indicated that they reduced originations of non-QM loans as a result of the rule.

The CFPB's failure to recognize the unique structure of credit unions and tailor regulations accordingly has caused significantly higher compliance costs for credit unions across the country. Credit unions are not the bad players in the market seeking to take advantage of uninformed borrowers. Credit unions, as member-owned, not-for-profit cooperative financial institutions, only succeed when their members succeed. Additionally, credit unions have historically and continue to provide the highest quality loans across the board, with consistently lower mortgage default rates than other financial institutions. NAFCU encourages the CFPB to make every attempt to not evaluate data in a vacuum and look at the credit union market specifically. Such analysis would reveal that credit unions provide the best mortgage products on the market. Consequently, the CFPB should provide credit unions with a tailored QM category that accounts for the high quality of their loans.

The rule, as implemented, has constrained credit union resources and production. Many credit unions have had to increase the number of staff in their mortgage departments to accommodate the increased compliance burden, in particular, the collection of additional documentation from the borrower to determine ability-to-repay, and the added processes and reporting required by the rule. Credit unions already have limited economic and personnel resources so every sweeping regulation makes it harder for credit unions to do what they do best: serve their members. Additionally, credit unions have found it harder to serve those members of the population that need access to credit the most. Credit unions have a reputation for serving underserved markets and helping their members even when other financial institutions refuse to do so. Rules like this make that substantially harder to do and, therefore, harm the portions of the American population that the CFPB claims to care about the most.

Temporary GSE QM Category Should Become Permanent

Continued and robust participation in the secondary mortgage market is essential to preserving the safety and soundness of the credit union industry. Credit unions depend on selling at least a portion of their loans to the GSEs to generate greater liquidity so they can issue more loans to their members. Because these loans are not subject to the flat 43 percent DTI limit, credit unions have more flexibility to offer loans to their members, especially those who are first-time homebuyers and may have difficulty meeting the DTI standard.

Ending this temporary category would have a substantially adverse effect on credit unions, likely causing many to reduce their mortgage originations even further and consequently hurt their members and the communities they serve. NAFCU and its member credit unions urge the CFPB to reconsider the provision to phase out this category of QM loans and, instead, make it a permanent QM category to better align the regulation with industry trends. The GSEs are in a significantly better position than they were immediately after the financial crisis and have developed sophisticated underwriting standards and special programs to help various classes of borrowers. Thus, the GSEs have proven they are capable of delineating between good lending practices and those lending practices that put the mortgage market at risk. The CFPB should acknowledge that these strong standards along with the effective leadership of the GSEs' conservator, the Federal Housing Finance Agency, warrants a continuation of this QM category to protect credit unions' ability to participate in the secondary mortgage market.

Need for Additional Clarifications and Modifications

Debt-to-Income Threshold

NAFCU requests that the CFPB modify the 43 percent DTI threshold to correspond with the GSEs' standard and establish consistency in the market. Fannie Mae is set to raise its DTI ceiling from the current 45 percent to 50 percent on July 29, 2017 based on a study conducted by the enterprise which concluded that, according to data spanning nearly a decade and a half, a significant number of borrowers with DTIs in the 45 percent to 50 percent range have good credit and are not prone to default. Given this change and the growing inconsistency among standards, now is the time for the CFPB to reevaluate the logic behind its arbitrary 43 percent DTI threshold. NAFCU requests the CFPB increase this DTI threshold to at least 45 percent, but preferably 50 percent, to align with Fannie Mae's new standard and allow credit unions greater flexibility to serve low- and moderate-income individuals.

Points and Fees Threshold

Not only has the points and fees calculation proven to be confusing and unnecessarily complex, but it has also hindered credit unions' ability to make loans to low- and moderate-income borrowers who have very limited access to credit and opportunities to achieve their dreams of homeownership. The points and fees calculation is immensely complicated primarily because of the numerous cross-references contained in that portion of the rule. NAFCU would like the CFPB to consider, at the very least, re-writing the rule to simplify it in terms of readability so that credit unions can properly apply the calculation.

Furthermore, NAFCU would like to reiterate its previous requests to exclude the following items from the general 3 percent cap on points and fees: (1) payments to employee loan originators and mortgage brokers involved in the transaction; (2) affiliate title charges; (3) escrow charges for taxes and insurance; (4) lender-paid compensation to a corresponding bank, credit union or mortgage brokerage firm; and (5) loan level price adjustments. These items should not be included in the calculation because they do not account for the unique credit union structure and strong incentive to ensure that members have the ability to repay their loans and pay the lowest possible rates.

Conclusion

NAFCU appreciates the opportunity to provide our comments on the ATR/QM Rule and the CFPB's plan to assess the rule. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2212 or akossachev@nafcu.org.

Sincerely,

Ann C. Kossachev

Ann Kossachev
Regulatory Affairs Counsel