July 31, 2017

<u>Via Electronic Submission</u>

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Comment on Docket No. CFPB-2017-0014—Notice of Assessment of Ability-to-Repay/Qualified Mortgage Rule and Request for Public Comment

Dear Ms. Jackson:

U.S. Mortgage Insurers ("USMI")[1] welcomes the opportunity to submit this response to the request for comment regarding the Consumer Financial Protection Bureau's (the "Bureau") notice of assessment of the Ability-to-Repay ("ATR")/Qualified Mortgage ("QM") rule ("Notice"). USMI applauds the Bureau for undertaking an assessment of this critical rule now that sufficient time has passed since the collapse of the mortgage market. As described below, USMI encourages the Bureau to assess whether arbitrage opportunities across the various QM standards have negatively impacted consumers, with a particular focus on the different treatment among the QM standards of the calculation of points and fees and the maximum borrower debt-to-income ("DTI") ratio. The calculation of points and fees is an area that can and should be addressed within the CFPB's statutory authority under its ATR/QM rule—by eliminating the points and fees cap applied to private mortgage insurance in the conventional market—or at a minimum by establishing a consistent application of the rule between the government insured market and the private mortgage insured market.

USMI also encourages the Bureau to expand the scope of its assessment to consider the QM standards promulgated by the U.S. Department of Housing and Urban Development ("HUD"), U.S. Department of Veterans Affairs ("VA"), and U.S. Department of Agriculture ("USDA") (collectively, "Federal Agency QM rules"). It is impossible to conduct a fulsome assessment of the ATR/QM rule's true impact on the mortgage market, including its impact on the availability of credit and whether it has successfully protected consumers, without also considering the Federal Agency QM rules. Structuring the assessment to consider all QM standards, not just the Bureau's QM standards (including the Temporary GSE QM), will provide analytic support for a harmonized QM standard that protects consumers against a regulatory-driven race to the bottom and expands liquidity throughout the market based on consumer preference and lender innovation, as opposed to regulatory favoritism. USMI further encourages the Bureau to, at the conclusion of its assessment, identify the broadest possible QM standard that encourages prudent lending and protects consumer access to credit.

[1] USMI is a trade association composed of the following private mortgage insurance companies: Essent Guaranty, Inc., Genworth Financial, Mortgage Guaranty Insurance Corporation, National Mortgage Insurance Corporation, and Radian Guaranty Inc.

As private mortgage insurers, USMI members have substantial data regarding mortgage defaults and substantial expertise in assessing and understanding mortgage credit risk. USMI hopes to work with the Bureau as it moves forward with its assessment to ensure that consumers receive the protections intended by the rule and are not pushed toward a particular product based on the differences among QM standards. To that end, the following letter responds to the Bureau's six specific requests for information.

1. *Comments on the feasibility and effectiveness of the assessment plan, the objectives of the ATR/QM Rule that the Bureau intends to emphasize in the assessment, and the outcomes, metrics, baselines, and analytical methods for assessing the effectiveness of the rule;*

I. The CFPB should assess the differing treatment of DTI and points and fees across the various QM standards to lay the groundwork for a harmonized QM standard irrespective of investor, insurer, or guarantor.

In general, the ATR/QM rule has worked exactly as intended—statistics suggest lenders are making far fewer risky loans but the rule has not destroyed the mortgage market or kept too many consumers from purchasing or refinancing their homes. To help keep liquidity in the market, the Bureau established categories of temporary QM loans to "preserve access to credit during a transition period while the mortgage industry adjusts to this final rule and during a time when the market is especially fragile." 78 Fed. Reg. 6,408, 6,536. The Bureau adds in its Notice that "[b]y providing for most of the conventional market to continue to originate higher debt-to-income loans as QM loans, but making that provision temporary (i.e., the Temporary GSE QM), the Bureau sought, over the long term, to encourage innovation and responsible lending on an individual basis under the ability-to-repay criteria." 82 Fed. Reg. 25,246, 25,249. Although the Bureau sought temporary solutions to enable lending to high DTI and riskier consumers, the market continues to rely on those temporary solutions. The result of the market's reliance on the myriad QM standards, and differences in those standards, is that consumers are being placed in loan products on the basis of the QM status that the consumer will get in that Agency's program, with no greater protection.

USMI encourages the Bureau to conduct an assessment of these variations across all QM standards to support future rulemakings that harmonize the QM standard and ensure liquidity is provided to markets that innovate, not markets where government entities tip the regulatory scales in their own favor. Specifically, USMI encourages the Bureau to undertake an assessment of the following provisions:

- Points and Fees: The various QM standards provide for different treatment of points and fees—a difference that drives lender behavior without a concomitant consumer benefit. For instance, consumers with downpayments of less than 20 percent of the purchase price may have an option to finance with a conventional product that has private mortgage insurance or a mortgage insured by the Federal Housing Administration ("FHA"), which is backed by the government. If the consumer wanted to finance their purchase with a conventional mortgage that had an upfront insurance premium, that premium would count toward the points and fees cap for purposes of QM status. However, if they financed with an FHA product, the FHA upfront premium would not count toward the points and fees cap. While this makes a significant difference in the economics of the transaction for the lender, it has absolutely no relevance to what product is best, or safest, for the consumer.[2] USMI encourages the CFPB to act within its statutory authority to eliminate the points and fees cap applied to private mortgage insurance—or at a minimum to establish a consistent application of the rule between the government insured market and the private mortgage insured market.

- Debt-to-Income Ratio: The various QM standards permit different, and even fluctuating, treatment of DTI, which undercuts the usefulness of the borrower protections associated with the QM safe harbor. There is analytical rigor behind default rates associated with particular DTI levels, and research has shown that compensating credit factors can reduce the incidence of default for borrowers with higher DTIs. However, the FHA QM standard undercuts this analytical rigor by completely eliminating the DTI requirement and the Temporary GSE standard effectively enables the GSEs to set their own DTI restrictions (as was made clear when Fannie Mae raised its maximum DTI for certain loans on July 25, 2017), relying largely on the GSEs' proprietary underwriting systems[3]. The varying levels of permissible DTIs, which will greatly differ once the Temporary GSE QM standard expires, again create opportunities for arbitrage, and can result in lenders directing consumers to a product based on regulatory protection as opposed to the needs of the consumer. The Bureau's assessment of the ATR/QM rule should examine DTIs above 43% and their interplay with compensating risk factors, with a view toward creating a more expansive standard that is both uniform and transparent. If harmonizing the QM standards is not possible, the various agencies setting QM standards should be required to justify permission of greater DTI levels and the permissive lending standards should be accompanied by periodic monitoring and reporting requirements.

II. The assessment will have limited effect unless the Bureau expands the scope of its assessment to include all QM standards.

Congress enacted the statutory ATR/QM requirements to address its finding that "economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable, mortgage credit remains available to consumers." 15 U.S.C. § 1639b(a)(1). Congress also sought to ensure "that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive." 15 U.S.C. § 1639b(a)(2). Under the ATR requirements, a creditor is prohibited from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations. Congress also provided for the creation of a class of QM loans, for which compliance with the ATR requirement is presumed. Currently, there are five types of QM loans—Appendix Q, Temporary GSE QM, Federal Agency QM, small creditor portfolio loans, and rural balloon-payment portfolio loans. Within the Federal Agency QM category, there are an additional four separate types of QM loans.

[2] The favorable treatment of FHA mortgage insurance premiums also permits consumers to receive higher cost mortgages than those permitted under the Bureau's QM standard. The FHA QM standard defines a safe harbor loan based on the average prime offer rate ("APOR") plus 115 basis points and the annual FHA MIP while the Bureau's QM rule safe harbor is based on APOR plus 150 basis points, but does not include any private mortgage insurance premiums.

[3] Desktop Underwriter and Loan Prospector are the proprietary underwriting engines owned by Fannie Mae and Freddie Mac.

Given the limited scope of, and reliance on, the Bureau's QM standards thus far, a true assessment of whether the ATR/QM requirements are satisfying the Congressional aims of economic stability, availability of credit, and preventing a repeat in the deterioration of underwriting standards, is impossible without some consideration of the different Federal Agency QM rules. The Bureau should expand the scope of its assessment to include the Federal Agency QM rules, or at least consider the impact these rules have on consumers vis-à-vis the other QM rules. This expansion would also help inform the Treasury Department's recommendation for an alignment of QM standards that subject "all market participants to the same, transparent set of requirements."[4] As described below, this more inclusive assessment will enable the Bureau to reconsider its QM standard in light of actual market performance, provide feedback based on comprehensive information to the other agencies of the impact of their respective QM standards on consumers, and appropriately balance an expansive, yet prudent revised standard for the safe harbor.

A. *The Bureau, and not government entities subject to market pressures, is best situated to establish the liability standard associated with QM loans and assess whether the purpose of the ATR/QM rule is being satisfied.*

A consumer's ability to repay an obligation is based on their individual credit characteristics and financial situation and is not at all dependent on who is providing the insurance or guarantee. Congress also determined that certain loan features increase the risk of nonpayment and are also relevant to a consumer's ability to repay the obligation. It follows that the ATR/QM safe harbor should be based on a consumer's probability of defaulting on the obligation given a set of credit characteristics and product features. The source of financing, or the entity providing the insurance or guaranty for the loan, is irrelevant to whether the consumer has the ability to repay. To that end, a consumer who obtains conventional financing should have no more or less protection in defending themselves from predatory lending than a consumer who receives financing from a government insurer or guarantor.

A safe harbor is a legal standard, not an underwriting standard, and the Bureau, as the entity charged with administering the Truth in Lending Act ("TILA") and Regulation Z, should be the entity that defines that legal standard. After all, Congress enacted this provision of TILA to protect consumers and stabilize the economy—twin aims squarely within the Bureau's mission. Although other entities that have set forth QM standards certainly seek to purchase, insure or guarantee mortgages for which consumers have the ability to repay, they also are subject to public policy and market pressures to expand homeownership and maintain solvency, if not profitability. It is these pressures that can undercut prudent risk-taking and consumer protection. By promulgating their own QM standards, these other agencies have tilted the playing field in their favor, bringing additional risk to the taxpayer and creating arbitrage opportunities for lenders. There also is no evidence that the Federal Agency QM standards provide benefits to consumers that could not similarly be obtained in the private sector.

Although Congress authorized the federal agencies to issue their own QM rules, it required those agencies to issue rules consistent with the purposes of the ATR/QM requirements, to prevent

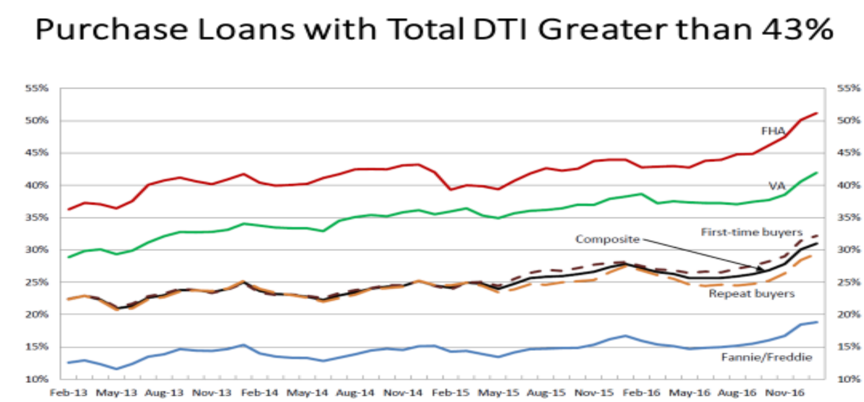
[4] United States Department of the Treasury. *A Financial System That Creates Economic Opportunities: Banks and Credit Unions*, June 2017, p. 99, available at: https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf

circumvention or evasion of the rules, or to facilitate compliance with the requirements. 15 U.S.C. § 1639c(b)(3)(B)(ii). The federal agencies also were required to issue the rules "in consultation with the Bureau." 15 U.S.C. § 1639c(b)(3)(B)(ii). Given the Bureau's involvement in promulgating or overseeing promulgation of all QM standards, and the important market impact divergent QM standards have on consumers, the assessment should not carve out Federal Agency QM rules.

B. FHA loan performance and statistics pertaining to the availability of low-downpayment products underscore why the assessment should be expanded to encompass Federal Agency QM rules.

As demonstrated by the data provided below, it is impossible to understand the market impact of one QM standard without considering all QM standards. Charts 1 and 2 show for conventional, FHA, and VA loans, the percentage of consumers obtaining purchase loans with total DTI greater than 43 percent and recent loan performance for each product type.

Chart 1



Note: Data pertain to purchase loans for primary owner-occupied properties.
Source: American Enterprise Institute (AEI) International Center on Housing Risk, www.HousingRisk.org.

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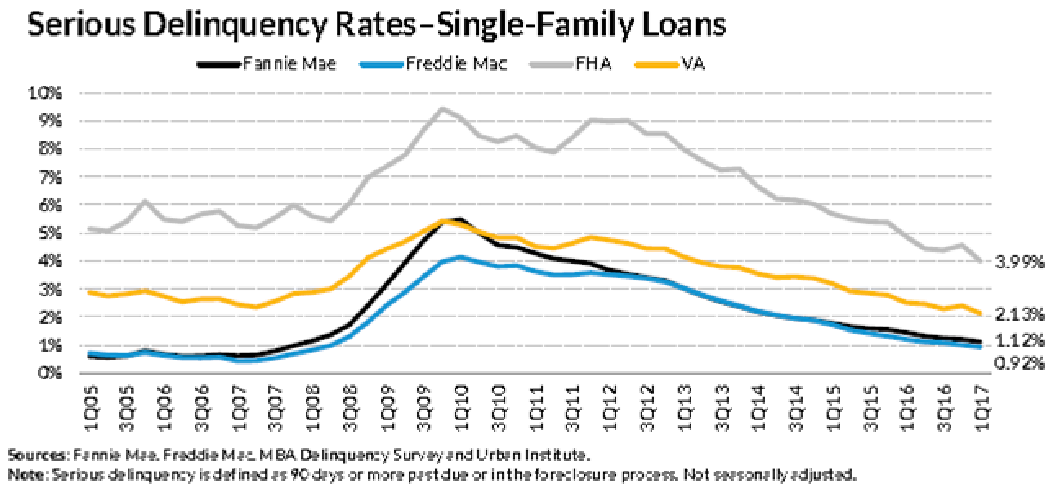
Chart 2



The prevalence of consumers with DTIs in excess of 43% obtaining purchase loans backed by FHA and VA is undoubtedly linked to the omission of a DTI requirement in the Federal Agency QM standard. Interestingly, Chart 2 shows that the incidence of FHA loans past due is significantly higher than that of VA products, even though there is a concentration of consumers with DTIs in excess of 43% for both product types. The Bureau's assessment of the ATR/QM rule should focus on these consumer outcomes, as the variation in product distribution and perhaps loan performance is directly related to whether the Congressional purpose of the entire ATR/QM rule is being met.

The variation across QM standards also has a real-life impact on the consumer's mortgage shopping experience. When a consumer shops for a mortgage, they typically are not requesting a conventional product or an FHA product, but rather are relying on loan officers to provide them with guidance regarding available mortgage products. A consumer looking for a low downpayment product might be interested in both a conventional product supported by PMI and an FHA product. It therefore follows that any assessment that considers only the Bureau's QM standards will have a significant gap because it will achieve an understanding of only some, but not all, products being offered to consumers. To understand the impact of the rule, and particularly with respect to consumers with marginal credit profiles, the Bureau must seek to understand the above data—how are high-DTI consumers being treated and which types of QM standards are resulting in consumers actually being able to repay their obligations.

USMI recommends that, as part of its assessment, the Bureau collect data from various stakeholders to figure out where to draw a common set of boundaries and, to the extent certain QM standards are not adequately protecting consumers, outline an appropriate, harmonized standard that, based on available data, is expanding the availability of credit while also protecting consumers.

2. *Data and other factual information that may be useful for executing the Bureau's assessment plan;*

USMI supports the Bureau's decision to conduct quantitative research on loan originations, rejection rates, and loan performance. Any analytical analysis of QM should compare loan performance data across the various QM standards to better understand the real impact of having multiple standards in the market.

3. *Recommendations to improve the assessment plan, as well as data, other factual information, and sources of data that would be useful and available to execute any recommended improvements to the assessment plan;*

As noted in the response to the Bureau's first request, USMI maintains that the assessment will be improved significantly if the Bureau expands the assessment to incorporate Federal Agency QM standards.

4. *Data and other information about the benefits and costs of the ATR/QM Rule for consumers, creditors, and other stakeholders in the mortgage industry; and about the impacts of the rule on transparency, efficiency, access, and innovation in the mortgage market;*

USMI members have observed that credit quality and underwriting practices have vastly improved in the wake of the Great Recession, although there are recent indications that lenders and investors are loosening underwriting standards. In particular, it appears that an increasing number of loans are being made to borrowers with high DTIs and, in particular, high LTVs. As we move further from the Great Recession, and as lenders and investors seek to further expand the credit box, it will be important to have harmonized QM standards with sufficient guardrails to avoid a race to the bottom. Or, at the very least, to provide protections to those lenders operating within the QM standard and choosing to forgo the race to the bottom.

On the other hand, overtightening of the QM standards will destabilize the economy if deserving consumers are unable to purchase a home. USMI data indicates that, as a result of the rule, consumers who would otherwise be eligible for loans because they have a reasonable ability to repay the obligation, have been cut out of the market, or forced into an FHA product that may carry unfavorable pricing. USMI also observes that most conventional mortgages are being originated under the Temporary GSE QM standard as opposed to the Bureau's Appendix Q standard.

USMI therefore encourages the Bureau to undertake an assessment of those consumers that have been shut out of the market, and whether enhancements to QM standards, or further harmonization of the various QM standards, can improve access to credit while still protecting borrowers.

5. *Data and other factual information about the rule's effectiveness in meeting the purposes and objectives of Title X of the Dodd-Frank Act (section 1021);*

The fragmentation of QM standards cuts against the purposes and objectives set forth in Section 1021 of the Dodd-Frank Act. Included among the various purposes and objectives of the Bureau set forth in Section 1021 of the Dodd-Frank Act are that:

- Federal consumer financial law is implemented and enforced consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive;

- Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
- Markets for consumer financial products and services operated transparently and efficiently to facilitate access and innovation.

As set forth in USMI's response to the Bureau's first request for information, the fragmentation of QM standards potentially results in lenders steering consumers into a particular product because of favorable treatment under the QM standard, and not because the product is best suited to the particular consumer's needs. A harmonized, federal QM standard will guard against this arbitrage, protect against a race to the bottom, and protect consumers by better aligning lender and consumer incentives. This will lead to greater fairness, transparency and competition in the mortgage market while simultaneously serving the interests of consumers.

6. *Recommendations for modifying, expanding, or eliminating the ATR/QM Rule.*

USMI hopes and expects that the Bureau's assessment will provide qualitative support for the safe expansion of the QM safe harbor and the harmonization of requirements across the various QM standards. Specifically, USMI recommends that the Bureau provide for consistent treatment of DTI guidelines and calculation of points and fees across the various QM standards.

USMI also encourages the Bureau to focus the protections of the QM standard on a consumer's ability to repay the obligation, and not on the entity insuring or guaranteeing the loan. As the Great Recession taught the country, just having skin in the game does not prevent against fraud or protect against weakening lending standards. It is USMI's view that the Bureau is in the best position to analyze today's lending activities and to inform the boundaries of a uniform QM standard that operates throughout the entire mortgage market.

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Private MI plays a critical role in bringing private investors into the mortgage market and making additional, low downpayment products available to consumers seeking to achieve their goal of homeownership. Indeed, our entire industry is devoted to helping borrowers of modest means achieve the dream of homeownership in a safe, sustainable, and well-regulated manner. USMI appreciates the opportunity to comment on the Bureau's Notice and questions or requests for further information may be directed to Lindsey Johnson, President and Executive Director of U.S. Mortgage Insurers, at ljohnson@usmi.org or 202-280-1820.

Sincerely,

Lindsey Johnson
President & Executive Director