

# OFFICE OF ADVOCACY

REGULATION • RESEARCH • OUTREACH



July 28, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1275 First Street NE  
Washington, DC 20552

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

Dear Director Cordray:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Consumer Financial Protection Bureau (CFPB or the Bureau) Request for Information Regarding 2013 Ability-to-Repay/Qualified Mortgage (ATR/QM) Assessment.<sup>1</sup> Advocacy encourages the CFPB to consider less burdensome alternatives for small entities as part of the assessment process. Specifically, Advocacy believes that the assessment of the rule would benefit from a comprehensive study to determine the economic impact that the QM rule has had on small entities and further outreach to small entities to develop less costly alternatives.

## Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA,<sup>2</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

<sup>1</sup> 82 *Federal Register* 25246, June 1, 2017.

<sup>2</sup> 5 U.S.C. § 601 et seq.

<sup>3</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>4</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>5</sup>

In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act or Dodd-Frank).<sup>6</sup> Section 1011 of the Act establishes the CFPB to supervise certain activities of financial institutions. Section 1100G, entitled "Small Business Fairness and Regulatory Transparency," amends 5 U.S.C. § 609, to include the CFPB with its coverage. The CFPB convened a SBREFA panel for the mortgage servicing rule in 2012.

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held a roundtable on this issue on June 26, 2017.

### **The Assessment Process**

Section 1022(d) of the Dodd-Frank Act requires the CFPB to conduct an assessment of each significant rule or order adopted by the CFPB under the Federal consumer law. The CFPB must publish a report of the assessment not later than five years after the effective date of such rule or order.

### **The 2013 Ability to Repay/Qualified Mortgage Rule**

The ATR/QM rule prohibits a creditor 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 (such as property taxes). It does not apply to investment loans, open-end home equity lines of credit, timeshare plans, reverse mortgages, or temporary loans.<sup>7</sup>

The rule establishes general underwriting criteria and restrictions on product features and costs. It prohibits certain products such as negative amortization, balloon payments, interest-only payments, and terms greater than 30 years. In addition, the total points and fees payable in connection with a QM Loan must not exceed a certain percentage of the loan amount.<sup>8</sup>

The ATR/QM Rule also provides for a class of "qualified mortgage" (QM) loans, for which compliance with the ATR requirement is presumed. That presumption of compliance can be either conclusive, *i.e.* a safe harbor, for QM loans that are not "higher-priced", or rebuttable, for QM loans that are "higher-priced."

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<sup>4</sup> Small Business Jobs Act of 2010 (PL 111-240) § 1601.

<sup>5</sup> *Id.*

<sup>6</sup> Pub. L. 111-203.

<sup>7</sup> 82 *Fed. Reg.* at 25247.

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

There are different types of QM loans. General QM Loans require creditors to adhere to requirements provided in Appendix Q and ensure that the ratio of the consumer's total monthly debt to total monthly income does not exceed 43 percent of the debt to income ratio. Creditors must also calculate mortgage payments based on the highest payment that will apply in the first five years of the loan.<sup>9</sup>

The ATR/QM Rule provides a separate, temporary category of QM loans for loans eligible to be purchased or guaranteed by either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (collectively, the GSEs) while they operate under Federal conservatorship or receivership ("Temporary GSE QM" loans). The temporary GSE QMs will be in effect until the end of the conservatorship or January 10, 2021.<sup>10</sup>

There is also a category of qualified mortgages that allows for more flexible underwriting standards for small creditor portfolio loans as well as a category for small creditors that operate in rural or underserved areas to make balloon-payment portfolio loans that are qualified mortgages.<sup>11</sup>

### **Recommendations for Modifying, Expanding or Eliminating the ATR/QM Rule**

As noted above, Advocacy held a roundtable on the issue of the ATR/QM assessment in June 2017. At the roundtable, small financial institution representatives stated that credit is being denied to customers who would have qualified for a mortgage in the past. The roundtable participants also stated that Appendix Q is too complex and problematic for self-employed borrowers and asserted that the 43 percent debt-to-income ratio may be too low. They further asserted that the three percent cap on points and fees is problematic and that the points and fees test is confusing. Advocacy is concerned that the effect of this rule has been that these small financial institutions are not making loans that they otherwise would, even to qualified borrowers.

As part of the assessment, Advocacy encourages the CFPB to analyze the impact that the rule has had on the availability of mortgages to creditworthy individuals, including those in the interior and rural parts of the country and the impact that the rule has had on small businesses that use home mortgages to finance their business ventures. Advocacy further encourages the CFPB to analyze the economic impact that the inability to provide mortgages to credit worthy individuals has had on financial institutions. Advocacy is further concerned that the complexities presented by Appendix Q; the CFPB should determine, as part of this assessment, the contribution these complexities have made to the problems stated by the roundtable participants.

### **Conclusion**

Advocacy asserts that an analysis of the economic impact that the ATR/QM rule has had on the mortgage industry and their customers would improve the assessment. Advocacy further asserts that outreach to the small business community would result in the consideration of less

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<sup>9</sup> *Id.* at 2548.

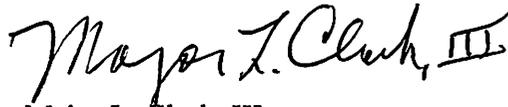
<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

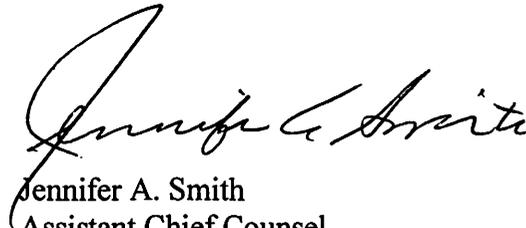
burdensome alternatives and minimize some of the confusion that is associated with the ATR/QM rule.

Thank you for the opportunity to comment on this important RFI and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 205-6943.

Sincerely,



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