

September 16, 2019

**Via Electronic Submission**

The Honorable Kathleen Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

**Re: Advance Notice of Proposed Rulemaking Regarding the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z), Docket No. CFPB-2019-0039**

Dear Director Kraninger:

U.S. Mortgage Insurers (“USMI”)<sup>1</sup> represents America’s leading providers of private mortgage insurance (“MI”). USMI is dedicated to a housing finance system backed by private capital that enables access to prudent and sustainable mortgage finance for borrowers while protecting taxpayers. USMI and its members are uniquely situated to assess and provide insights into mortgage credit risk throughout the United States, with more than six decades of expertise in underwriting and actively managing that risk. As entities that bear first losses on low down payment mortgages, before Fannie Mae and Freddie Mac (the “GSEs”) and taxpayers, our members’ interests are closely aligned with the objectives of the “Ability-to-Repay” (“ATR”) requirement that Congress added to the Truth in Lending Act.

USMI appreciates the opportunity to comment on this Advance Notice of Proposed Rulemaking (“ANPR”)<sup>2</sup> from the Consumer Financial Protection Bureau (the “Bureau”) regarding potential changes to the definition of a Qualified Mortgage (“QM”) as implemented by section 43(e) of Regulation Z.

USMI recognizes the importance of addressing the so-called “GSE Patch” loan category—as codified by section 43(e)(4) of Regulation Z—ahead of its January 2021 expiration. The GSE Patch has played a critical role in maintaining credit availability and it is vital that the Bureau provide a smooth and orderly transition from its expiration. Consistent with the fact that the GSE Patch was created as a temporary QM category, USMI supports moving to a QM definition that can be applied consistently throughout the mortgage market in a manner that balances prudent underwriting and credit risk management with borrower access to mortgage finance credit.

Because the underlying ATR standard is inherently subjective, the heightened standards to gain QM status and the attendant protections from legal liability must incorporate clear and measurable thresholds. Absent such thresholds, virtually all loans that satisfy the broadly defined ATR standards could be deemed to be QM; an outcome that USMI believes would be at odds with the legislative and regulatory intent that led to the creation of the QM standard in the first place, that is, to provide a presumption of compliance for loans that meet certain measurable underwriting thresholds. Further,

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<sup>1</sup> USMI is a trade association composed of the following private mortgage insurance companies: Essent Guaranty, Inc.; Genworth Mortgage Insurance Corporation; Mortgage Guaranty Insurance Corporation; National Mortgage Insurance Corporation; and Radian Guaranty, Inc.

<sup>2</sup> 84 Fed. Reg. 37155 (July 31, 2019).

USMI does not support moving to a QM definition that removes specific underwriting criteria thresholds and maintains a safe harbor threshold that solely utilizes the spread between a loan’s annual percentage rate (“APR”) and the Average Prime Offer Rate (“APOR”), because a loan’s pricing is not always an accurate measurement of credit risk, particularly when pricing can be manipulated by creditors in order to gain QM status.

## I. Summary of Recommendations

### A. *The Bureau Should Make Changes to the Definition of “Qualified Mortgage” and Create a Permanent Unified QM Standard*

USMI supports retaining the current QM restrictions on risky loan features such as terms exceeding 30 years, negative amortization, interest-only payments, or balloon payments.<sup>3</sup> We do not, however, believe that the absence of these features is sufficient, by itself, to warrant QM status for a mortgage absent other underwriting safeguards.

USMI notes that the base ATR standards are, by design, extremely subjective. Lenders meet the general ATR standard so long as they make a reasonable and good faith determination that the consumer will have an ability-to-repay the loan according to its terms and, as part of this determination, “consider” the consumer’s income or assets, employment status, the payment on the covered transaction along with any simultaneous loans and mortgage-related obligations, current debt obligations, alimony and child support, debt-to-income (“DTI”) ratio or residual income, and their credit history.<sup>4</sup>

In creating the ATR standard, the Bureau did not mandate comprehensive underwriting standards to which creditors must adhere because it anticipated creating more specific requirements as part of the QM definition. For example, the ATR standard does not have a maximum DTI ratio or minimum credit score. Specifically, the official commentary states:

§ 1026.43(c) and the accompanying commentary describe certain requirements for making ability-to-repay determinations, but do not provide comprehensive underwriting standards to which creditors must adhere. As an example, new comment 43(c)(1)–1 notes that the rule and commentary do not specify how much income is needed to support a particular level of debt or how to weigh credit history against other factors.<sup>5</sup>

Because of the subjectivity of the underlying ATR standard, the Bureau promulgated heightened standards for loans to gain QM status and the attendant protections from liability, which must continue to incorporate measurable thresholds. Absent such thresholds, virtually all loans that satisfy the broadly defined ATR standard could be deemed to be a QM; an outcome that USMI believes would be at odds with the legislative and regulatory intent that led to the creation of the QM standard in the first place. As such, the Bureau should retain the current DTI ratio component of the QM definition but modify the qualifying threshold in order to better serve consumers, create a level playing field between the conventional and Federal Housing Administration (“FHA”) markets, and reduce the impact of the expiration of the GSE Patch. While USMI supports moving to a QM definition that can be applied consistently throughout the mortgage market, one of the worst outcomes would be for the Bureau to

<sup>3</sup> 12 C.F.R. § 1026.43(e)(2)(i)–(ii).

<sup>4</sup> 12 C.F.R. § 1026.43(c)(2)(i)–(viii).

<sup>5</sup> Ability-to-Repay Final Rule, 78 Fed. Reg. 6407, 6461 (Jan. 30, 2013).

allow the GSE Patch to expire without a responsible alternative in its place that ensures creditworthy borrowers continue to have prudent access to the conventional market, as the GSE Patch has played a critical role in maintaining credit availability. USMI also believes there are more responsible alternatives than a QM definition that removes specific underwriting thresholds and maintains a safe harbor that solely utilizes the spread between a loan's APR and APOR based on the theory that a loan's APR is an accurate, holistic measure of credit risk. As discussed in more detail below, a consumer's DTI ratio is correlative with a consumer's ability-to-repay, especially when used in conjunction with other compensating factors. A loan's pricing, as reflected in the APR, does not fully capture credit risk, as pricing often reflects a number of other things outside of a borrower's credit risk profile. Further, pricing can easily be manipulated in order to gain QM status.

As policymakers and regulators looked to prevent underwriting practices that occurred leading up to the financial crisis—lending to consumers without a reasonable consideration of their ability-to-repay—the Bureau established the 43% DTI ratio limit for QM loans. As presented below, historical and more recent GSE and member company loan data demonstrates that absent compensating factors, higher DTI ratios are in fact correlated to a higher likelihood of default (see Figure 1 below demonstrating a correlation between DTI ratios and default rates until the point where compensating factors are applied for loans that have greater than 45% DTI). Although DTI ratio is correlated to delinquency rates, it is not the only—or even the most—useful factor in assessing a borrower's ability-to-repay a mortgage and may not be a sufficient metric by itself to determine a consumer's ability-to-repay a mortgage obligation. However, in tandem with compensating factors, DTI can function as a bright line that curtails undue risk while still providing access to credit for home-ready borrowers.

Since the enactment of the QM Rule, other compensating factors have been considered for GSE Patch loans that were above the 43% cap applicable to general QMs. GSE loan-level performance data and USMI member company data demonstrate that there are a number of factors, as discussed further below, that consistently cause loans with a DTI ratio above 43%, and even above 45%, to outperform loans with DTI ratios below 43% without the same factors present.

As such, the Bureau should increase the current 43% limit on a borrower's DTI ratio to 45% for all loans, and up to 50% for loans with these demonstrable mitigating underwriting factors ("compensating factors"). The adjustment from 43% to 45% is necessary to ease the transition away from the GSE Patch, under which the GSEs currently apply compensating factors for loans with DTIs greater than 45%, without unnecessarily restricting access to credit for consumers who exceed that threshold but are nevertheless creditworthy. As the Bureau noted in ANPR, approximately 957,000 loans—16% of all closed-end first-lien residential mortgage originations in 2018—fell within the QM Patch loan definition but not the general QM loan definition due to the 43% DTI ratio limit.<sup>6</sup> The increase to a maximum DTI ratio of 50%, coupled with compensating factors, will ensure that creditworthy borrowers will maintain access to prudent mortgage credit while at the same time limiting the risk layering that drives nonperformance.

USMI believes that a 50% maximum DTI ratio is the optimal upper limit. Currently, with very limited exceptions, GSE underwriting guidelines have a maximum cap on DTI ratios at 50%. Therefore, while there is ample industry data to assess performance on loans with a DTI ratio at or below 50%, there is virtually no recent publicly available data to perform an empirically derived analysis on loans with DTI ratios greater than 50%.

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<sup>6</sup> 84 Fed. Reg. at 37159.

Specifically, USMI believes that the Bureau should establish a single, transparent QM standard that relies on a list of compensating factors for all loans with DTI ratios above 45% and up to 50%. A list of compensating factors could be applied to all QM mortgages and could be incorporated into manual underwriting guides and into automated underwriting systems (“AUSs”). Further, any market participant could publish or code the criteria in their investment requirements. The use of these compensating factors, together with a DTI standard, avoids the layering of risk that undermines a borrowers’ ATR. Data suggests that, while delinquency is correlated to DTI ratio, the presence or absence of other layered risks also substantially drives loan performance. As shown in Figure 1, the absolute ever delinquent rates consistently increase as DTI ratios increase, until the 45.01-50% bucket, where it substantially decreases. This decrease is almost certainly due to the presence of appropriate compensating factors in the GSEs’ AUSs that are required to qualify for a loan above a 45% DTI ratio. These same compensating factors are not required for loans with lower DTI ratios, resulting in worse performance for loans with lower DTI ratios.

**Figure 1: GSE Actual Ever Delinquent Rates (2012-2017, ≤97% LTV)<sup>7</sup>**

	<= 35	35.01 - 38	38.01 - 41	41.01 - 43	43.01 - 45	45.01 - 50	Total
2012	5.0%	6.9%	7.6%	8.2%	9.1%	7.2%	6.0%
2013	5.3%	7.1%	7.8%	8.5%	9.5%	7.3%	6.4%
2014	6.1%	7.9%	8.7%	9.3%	10.6%	7.8%	7.4%
2015	5.1%	6.8%	7.5%	8.1%	9.2%	6.6%	6.3%
2016	3.9%	5.3%	5.8%	6.4%	7.3%	4.8%	4.9%
2017	2.6%	3.5%	3.9%	4.2%	4.8%	3.1%	3.3%
Total	4.7%	6.2%	6.8%	7.4%	8.3%	5.8%	5.7%

This dynamic illustrates that DTI ratio is correlated with loan performance, but that the presence of compensating factors is also a powerful driver of performance, and thus a borrower’s ability-to-repay their mortgage. Note that the delinquency rates for loans in the 45.01-50% bucket are, in fact, lower than the delinquency rates for loans in all buckets except the two buckets covering 38% and lower DTI ratios in all covered vintages. This is strong evidence that compensating factors should be incorporated into the definition of a QM in order to maintain access to credit after the elimination of the GSE Patch while also moderating credit risk associated with higher-DTI ratio loans.

As USMI developed its list of compensating factors, we initially assessed those currently used by the GSEs for loans with DTIs above 45 and up to 50%. Because factors used by the GSEs are buried within their respective underwriting AUSs, USMI member company underwriting data were analyzed to assess which compensating factors likely were being utilized. This analysis demonstrated that that GSE loans with DTI ratios greater than 45%: (1) have a greater presence of at least three months of reserves in the bank; (2) tend to have a greater number of loans with at least a 5% down payment; and (3) tend to have the fewest number of loans with FICO credit scores below 680, which can be used as a proxy that these borrowers did not have recent derogatories in their credit file. Member company data

<sup>7</sup> GSE Single Family Loan-Level Dataset.

also demonstrates that the GSEs apply considerations/limits for payment shock for loans with greater than 45% DTIs.<sup>8</sup>

In light of the performance data and consistent with the legislative and regulatory intent behind the ATR rule, USMI suggests that at least three of the four following compensating factors be present in any loan with a DTI above 45 and up to 50% in order for it to be deemed a QM:

**Figure 2: Proposed Compensating Factors—Borrowers Should have Three of Four**

<b>Compensating Factors for Mortgages with DTI Ratios above 45% and up to 50%</b>	<b>Rationale</b>
Down payment of at least 5% from borrower’s own funds (for purchase-money loans)	Borrowers with more equity are less likely to become delinquent on their mortgages
Reserves of at least 3 months <sup>9</sup>	Borrowers with higher amounts of liquid reserves are less likely to become delinquent on their mortgages
Prior history of similar monthly payments <sup>10</sup>	Demonstrated capacity to make similar monthly payments for housing and other expenses (an indicator of a borrower's ability to repay). Further, not a significant increase in non-mortgage related debt.
Credit history of at least 24 months with at least 3 trade lines; No 30-day late mortgage payments and maximum of one 30-day late non-mortgage payment in past 12 months; No serious instances of derogatory credit	A longer established credit history has a positive impact on a borrower's credit profile; A strong payment history with a limited number of recent delinquent payments has a positive impact on a borrower's credit score

USMI members developed this list of compensating factors based on the predictiveness of each factor listed and were able to “back-into” the factors used by the GSEs, however, the Bureau should request that FHFA obtain the full list of compensating factors used by the GSEs since the implementation of the GSE Patch, and make this information and data on the predictiveness of each factor available to the public for review and assessment. USMI’s approach of adding clear compensating factors into the QM

<sup>8</sup> Data based on one USMI member company’s analysis done as part of their independent underwrite of GSE loans. USMI members are willing to share the specific data on the presence of these compensating factors with the Bureau and encourages the Bureau to request the specific list of factors and the data regarding their predictiveness with the Bureau and stakeholders.

<sup>9</sup> Documented cash reserves that are liquid or readily convertible to cash. Similar to FHA, this would include: borrower-held checking and savings accounts; cash held outside a financial institution; retirement accounts (includes IRAs, thrift savings plan, 401(k) plans, and Keogh accounts); stocks and bonds; private savings clubs; and gifts (from relatives, close friend, charitable organization; or governmental agency). See HUD Single Family Housing Handbook at 4000.1.II.A.4.d, (Aug. 14, 2019), <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsggh.pdf>.

<sup>10</sup> Member company data demonstrates that, for 2019 GSE loans, more loans with DTIs above 45% and up to 50% were likely to have reduced payment shock compared to loans with DTIs between 41-45%. Further, based on member company data, loans with a 50% or greater increase in monthly payments, experienced greater instances of early payment defaults (“EPDs”). EPD occurs when a mortgage loan goes 60 or more days delinquent or into default status within the first year of the loan being originated. Member company data demonstrated a similar increase in EPDs where there was a significant increase in new non-mortgage debt. Similar to FHA underwriting guidelines. See *id.*, 4000.1.II.A.5.d.ix.C.

definition will bring much more transparency for consumers and market participants and will provide greater certainty to lenders, with less dependency on GSEs' AUSs.

Further, a single standard that relies on a transparent set of compensating factors would also facilitate greater consistency with government programs such as FHA and VA that are required to enact their own definitions of QM. In fact, FHA currently uses a similar framework in which the maximum allowable DTI ratio increases with the presence of one or more of the following compensating factors: (1) three months cash reserves,<sup>11</sup> (2) a minimal increase in housing payment,<sup>12</sup> (3) residual income,<sup>13</sup> and (4) significant additional income not reflected in effective income.<sup>14</sup> The allowable maximum DTI ratio for an FHA loan is generally 43%, but increases to 47% when one compensating factor is present, and can be 50% or higher when two compensating factors are present.<sup>15</sup> FHA serves a very important role in the market, helping borrowers who are unable to get mortgage finance through the conventional market. While incorporating compensating factors into the general QM definition will significantly decrease the disparities between the general QM definition and the FHA definition, it is both anticipated and acceptable that the specific compensating factors between the conventional and FHA markets vary to be best suited to meet the needs of their respective borrowers. In this regard borrowers will be better served in a market where their choices are driven by their personal financial situation and goals rather than by disparate definitions of what constitutes a QM. The end result is that a transition to this framework—in conjunction with addressing issues related to Appendix Q, discussed below—would cause minimal disruption to the housing finance system while accomplishing the Bureau's stated goal of moving away from the temporary GSE Patch. This framework will be easy for lenders to implement as it is very similar to the framework and approach used in today's market, can be deployed in all lending channels and ensures that appropriate underwriting guardrails are maintained, while still promoting access to credit for home-ready borrowers.

### *B. The Bureau Should Replace Appendix Q*

Widely accepted standards for determining monthly debt and income are critical to the prudent, consistent underwriting of mortgage loans. However, the static nature of Appendix Q has proven problematic, especially as the domestic workforce continues to shift toward employment, including self-employment, that does not result in W-2 income. Industry data shows that roughly 20% of loans

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<sup>11</sup> *Id.* at 4000.1.II.A.5.d.ix.B (“Verified and documented cash Reserves may be cited as a compensating factor subject to the following requirements ... [r]eserves are equal to or exceed three total monthly Mortgage Payments (one and two units) ....”).

<sup>12</sup> *Id.* at 4000.1.II.A.5.d.ix.C (“A minimal increase in housing payment may be cited as a compensating factor subject to the following requirements: the new total monthly Mortgage Payment does not exceed the current total monthly housing payment by more than \$100 or 5% percent, whichever is less; and there is a documented 12 month housing payment history with no more than one 30 Day late payment. In cash-out transactions all payments on the Mortgage being refinanced must have been made within the month due for the previous 12 months.”).

<sup>13</sup> HUD Single Family Handbook 4000.1.II.A.5.d.ix.F (“Residual income may be cited as a compensating factor provided it can be documented and it is at least equal to the applicable amounts for household size and geographic region found on the Table of Residual Incomes By Region found in the Department of Veterans Affairs (VA) Lenders Handbook - VA Pamphlet 26-7, Chapter 4.9 b and e.”).

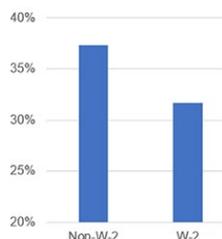
<sup>14</sup> *Id.* at 4000.1.II.A.5.d.ix.E (“Additional income from Overtime, Bonuses, Part-Time or Seasonal Employment that is not reflected in Effective Income can be cited as a compensating factor subject to the following requirements: the Mortgagee must verify and document that the Borrower has received this income for at least one year, and it will likely continue; and the income, if it were included in gross Effective Income, is sufficient to reduce the qualifying ratios to not more than 37/47.”).

<sup>15</sup> *Id.* at 4000.1.II.A.5.d.viii.

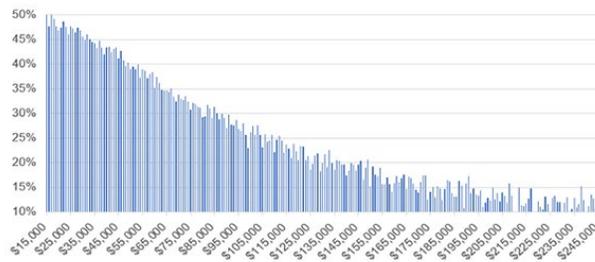
that qualified for QM status because of the GSE Patch were to borrowers who are not W-2 wage earners.<sup>16</sup> Restricting QM status to a maximum 43% DTI will not only disproportionately impact consumers who are not W-2 wage earners, who may be self-employed, retired, seasonal or employed in the part-time “gig economy,” but also lower income individuals.<sup>17</sup>

**Figure 3: Share of Purchase Mortgage Applications with DTIs >43% by Employment Type and Borrower Annual Income**

**Share of Purchase Mortgage Applications with DTI Ratios >43% by Employment Type, 2018**



**Share of Purchase Mortgage Applications with DTI Ratios >43% by Borrower’s Annual Income, 2018**



Except for the existence of the GSE Patch (which substituted a determination that a loan was eligible for sale to one of the GSEs in place of reliance on Appendix Q), mortgage lenders would have struggled to underwrite those creditworthy borrowers for QM loans. This is one of the reasons that simply allowing the GSE Patch to expire without addressing Appendix Q would be detrimental for housing and consumers’ access to mortgage finance.

Ultimately, Appendix Q effectively pushes more consumers towards GSE Patch loans, which rely on more flexible GSE guidelines and standards instead of Appendix Q. This is, of course, in direct contravention of the Bureau’s desire to move away from GSE Patch loans.

Therefore, Appendix Q should be phased out in favor of a more flexible and dynamic standard for calculating income and debt. USMI recommends that the Bureau should allow for the use of any debt and income calculation standards set forth and approved by FHFA, FHA, VA or USDA. This is the approach set forth by Senators Mark Warner and Mike Rounds, both members of the Senate Banking Committee, in the *Self-Employed Mortgage Access Act of 2019*<sup>18</sup> and the companion bill in the House of Representatives by Congressmen Tom Emmer and Bill Foster.<sup>19</sup> This approach would dramatically reduce discrimination against creditworthy borrowers with non-traditional forms of income who, according to Senators Warner and Rounds, represent 30% of the labor force.<sup>20</sup>

<sup>16</sup> Pete Carroll, *Expiration of the CFPB’s Qualified Mortgage “GSE Patch” – Part 1*, CORELOGIC (July 11, 2019) available at <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-1.aspx>.

<sup>17</sup> *Id.*

<sup>18</sup> S. 540 (116<sup>th</sup> Congress). See Press Release, *Warner Re-Introduces Bills to Prepare Americans for the Future of Work*, Feb. 25, 2019, available at <https://www.warner.senate.gov/public/index.cfm/2019/2/warner-re-introduces-bills-to-prepare-americans-for-the-future-of-work>.

<sup>19</sup> H.R. 2445 (116<sup>th</sup> Congress). See Press Release, *Foster, Emmer Introduce Legislation to Expand Mortgage Access for Self-Employed Workers*, May 1, 2019, available at <https://foster.house.gov/media/press-releases/foster-emmer-introduce-legislation-to-expand-mortgage-access-for-self-employed>.

<sup>20</sup> See *id.*

### C. *Level the Playing Field*

In its *Core Principles Reports – Banks and Credit Unions*, the Department of the Treasury found that “[t]he QM Patch for GSE-eligible loans creates an unfair advantage for government-supported mortgages, without providing additional consumer protection....”<sup>21</sup> There are further disparities created by different QM treatments between the FHA and conventional mortgage market, including the treatment of private mortgage insurance premiums versus FHA premiums in the calculation of the APOR spread. As discussed further in Section II below, to the extent that the Bureau opts to grant QM status based on a APOR based pricing standard or retains the distinction between safe harbor and rebuttable presumption QMs, the line of demarcation should be adjusted from the current 150 basis points above APOR to 200 basis points above APOR to account for MI premiums and for GSE loan-level price adjustments (“LLPAs”), or use the similar calculation as FHA, whereby safe harbor is based on APR being within APOR plus 150 basis points and MI premiums.

Finally, to further its objective of reducing disparities between government and private markets, the Bureau should also adjust the QM definition of points and fees to ensure equal treatment of similar fees—specifically upfront private mortgage insurance and upfront FHA mortgage insurance—regardless of which type of QM is being originated.

## II. Responses to Specific Requests for Comment in the ANPR

### A. Assessing Ability-to-Repay under the General QM Loan Definition

**1(a)** *Assuming the Bureau retains as part of the General QM loan definition a criterion that directly measures a consumer’s personal finances, should the Bureau continue to include only a DTI limit, or should the Bureau replace or supplement the DTI limit with another method?*

**1(b)** *Assuming that the Bureau retains a DTI limit as part of the General QM loan definition, should the limit remain 43% percent? Should the Bureau increase or decrease the DTI limit to some other percentage? Should the Bureau grant QM status to loans with DTI ratios above a prescribed limit if certain compensating factors are present?*

GSE loan-level performance data and USMI member company data demonstrate that there are a number of factors, as discussed further below, that consistently cause loans with DTIs above 43%, and even above 45%, to outperform loans with DTI ratios below 43% without the same factors present. As such, the Bureau should increase the current 43% limit on a borrower’s DTI ratio to 45% for all loans, and up to 50% for loans with these demonstrable compensating factors, which will ensure a smooth transition away from the Patch and ensure consumers maintain access to prudent mortgage credit. Industry data suggests that roughly 16% of mortgages originated in 2018 (totaling \$260 billion in loan origination volume) were only QM-eligible due to the GSE Patch.<sup>22</sup> Of this segment of the market, more than three-quarters had DTI ratios above 43%.<sup>23</sup>

<sup>21</sup> U.S. Dep’t of Treasury. *A Financial System that Creates Economic Opportunities Banks & Credit Unions*, pg. 99 (June 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf>.

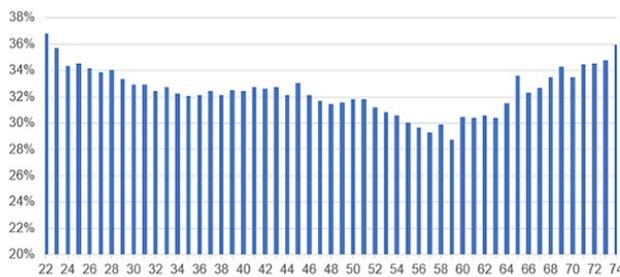
<sup>22</sup> Pete Carroll, *Expiration of the CFPB’s Qualified Mortgage “GSE Patch” – Part 1*, CORELOGIC (July 11, 2019).

<sup>23</sup> *Id.*

Additionally, as noted in the Bureau’s 2019 ATR/QM Assessment Report, “[i]t is estimated that the General QM DTI provision has eliminated between 63 and 70 percent of approved non-GSE High DTI applications for home purchase among the nine lenders that contributed the data, over the period of 2014–2016[.]”<sup>24</sup>

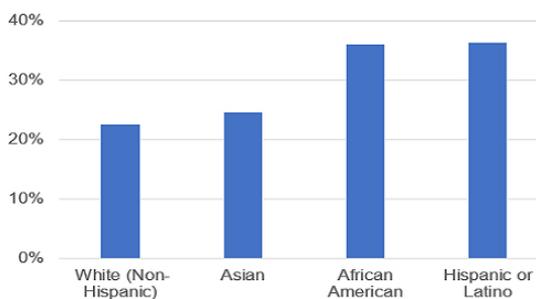
Further, borrowers aged 33 and younger (*i.e.*, younger millennials) and aged 65 or above (mostly retirees) had the highest share of purchase mortgage applications with DTI ratio over 43% in 2018.<sup>25</sup>

**Figure 4: 2018 GSE Purchase Mortgage Applications with DTI Ratios > 43%, by Borrower Age**



HMDA data also suggests that African American and Hispanic or Latino borrowers accounted for the highest share of loans with DTI ratios above 43% in 2017, and those two groups were 160% more likely to have a DTI ratio above 43% than non-Hispanic whites.<sup>26</sup>

**Figure 5: Share of Purchase Mortgage Applications with DTI Ratios >43% by Borrower’s Race/Ethnicity, 2017**



To minimize these unintended and troubling impacts of permitting the GSE Patch to expire, USMI recommends that the Bureau raise the baseline maximum DTI ratio to 45% and up to 50% provided that certain compensating factors are present, similar to how loans are considered under the GSE Patch today. Specifically, for loans with DTIs above 45% and not greater than 50%, borrowers would be required to demonstrate the presence of three of the following compensating factors for purchase-money transactions:

<sup>24</sup> Bureau of Consumer Financial Protection, Ability-to-Repay and Qualified Mortgage Rule Assessment Report, pg. 156 (Jan. 2019).

<sup>25</sup> Archana Pradhan, *Expiration of the CFPB’s Qualified Mortgage “GSE Patch” – Part 2*, CORELOGIC (July 19, 2019) available at <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-2.aspx>.

<sup>26</sup> Archana Pradhan, *Expiration of the CFPB’s Qualified Mortgage “GSE Patch” – Part 3*, CORELOGIC (July 26, 2019) available at <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-3.aspx>.

1) *A down payment of at least 5% from the borrower’s own funds.*

For loans above 45% and up to 50% DTI, a minimum down payment of 5% from the borrower’s own funds should be considered by the Bureau as a compensating factor. There is ample data and analysis<sup>27</sup> to demonstrate the predictiveness of down payments, and that borrowers with lower down payments do present more risk of default. To assess the usefulness of a 5% down payment from a borrower’s own funds for determining borrowers’ ATR, USMI looked at performance data for borrowers with DTIs above 45% and up to 50%. The data represented below demonstrates that, for borrowers with DTIs above 45% and up to 50%, a 5% down payment compensating factor is appropriate given the underperformance the MI industry sees for loans with down payments less than 5% (95.01-97% bucket), which is 50% higher than the overall delinquency rate for loans with at least a 5% down payment. Further, loans for borrowers that rely on down payment assistance (such as from a relative or government agency) significantly underperform compared to loans with down payments from the borrowers’ own funds.

**Figure 6: GSE Mortgage Ever Delinquent Rates by LTV (Origination Years 2012-2017)<sup>28</sup>**

LTV	DTI 45.01-50%
80.01 – 85	4.4%
85.01 – 90	4.1%
90.01 – 95	4.3%
95.01 – 97	6.3%

2) *Liquid reserves of at least three months.*

Borrower reserves are an important compensating factor for their ATR and a critical credit characteristic correlated with continued monthly mortgage payments. Access to liquid assets<sup>29</sup> helps homeowners to avoid default in the event of a personal financial event. According to research by the JPMorgan Chase Institute, a borrower with at least three months of reserves in the bank was five times less likely to default on their mortgage as a borrower who had insufficient funds to cover even one mortgage payment.<sup>30</sup> While borrowers with less than one month’s mortgage payment in savings made up 20% of mortgages in the study, they accounted for 54% of the mortgages that went 90 or more days delinquent.<sup>31</sup>

<sup>27</sup> U.S. Dep’t of Hous. & Urban Dev, Research Report for Importance of Mortgage Downpayment as a Deterrent to Delinquency and Default as Observed in Black Knight (McDash) Servicing (Apr. 2017), <https://www.huduser.gov/portal/sites/default/files/pdf/Downpayment-FinalReport.pdf>. Page 9 provides a number of the conclusions from a multitude of research reports on the impact of down payment on a borrower’s likelihood of default

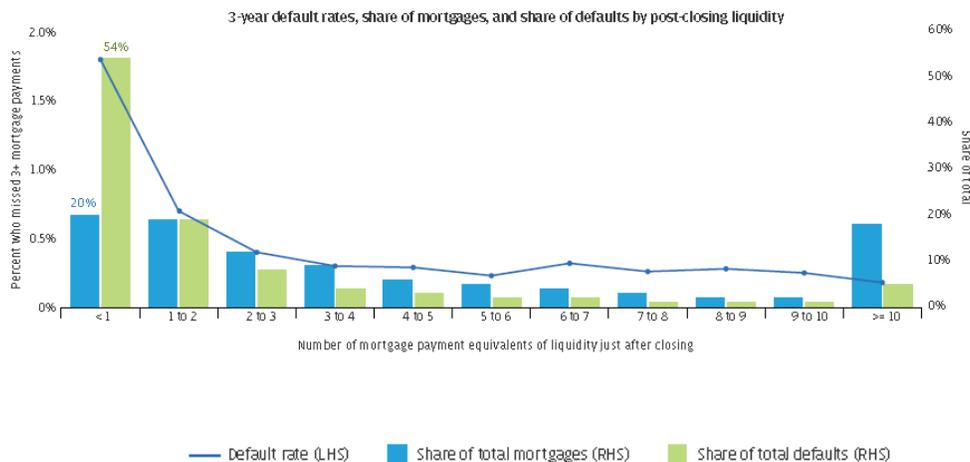
<sup>28</sup> GSE Single Family Loan-Level Dataset.

<sup>29</sup> Documented cash reserves that are liquid or readily convertible to cash. Similar to FHA, this would include: borrower-held checking and savings accounts; cash held outside a financial institution; retirement accounts (includes IRAs, thrift savings plan, 401(k) plans, and Keogh accounts); stocks and bonds; private savings clubs; and gifts (from relatives, close friend, charitable organization; or governmental agency). See HUD Single Family Handbook 4000.1.II.A.4.d.

<sup>30</sup> JPMorgan Chase Institute, *Trading Equity for Liquidity: Bank Data on the Relationship Between Liquidity and Mortgage Default* (June 2019), <https://www.jpmorganchase.com/corporate/institute/report-trading-equity-for-liquidity.html>.

<sup>31</sup> *Id.*

**Figure 7: 3-Year Default Rates, Shares of Mortgages & Share of Defaults by Post-Closing Liquidity<sup>32</sup>**



3) *A prior history of similar monthly payment without significant delinquency.*

Based on USMI member company data, mortgages to borrowers who experienced greater than a 50% payment shock from 2016-2019 were more likely to be EPD loans compared to those borrowers whose payments remained similar or that had a less than 50% increase in their payment.<sup>33</sup> Because USMI only had access to member data, which is limited to member company loans and the high LTV space, USMI recommends the GSEs provide the necessary loan-level data and analysis about the predictiveness of payment shock for all GSE loans for the same time period.

4) *A credit history of at least 24 months with at least three trade lines, no 30-day late mortgage payments and a maximum of one 30-day late non-mortgage payment in the past 12 months with no other seriously derogatory accounts.*

Based on USMI member company data, high LTV mortgages made to borrowers with limited credit history (less than three trade lines) and those with adverse mortgage/financial events (prior bankruptcy, foreclosure, or short sale) have significantly underperformed when compared to mortgage loans that lack those risk factors.

**1(c)(i) *Assuming the Bureau retains a criterion that directly measures a consumer’s personal finances, should creditors be required to continue using Appendix Q to calculate and verify debt and income? Should the Bureau replace Appendix Q? If the Bureau retains Appendix Q, how should it be changed or supplemented?***

**1(c)(ii) *If the Bureau does not retain Appendix Q or permits use of an alternative, what standard should the Bureau require or permit creditors to use to calculate and verify debt and income?***

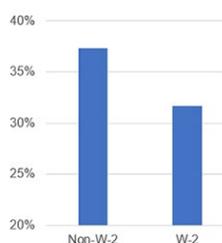
<sup>32</sup> *Id.*

<sup>33</sup> This is based on USMI member company data.

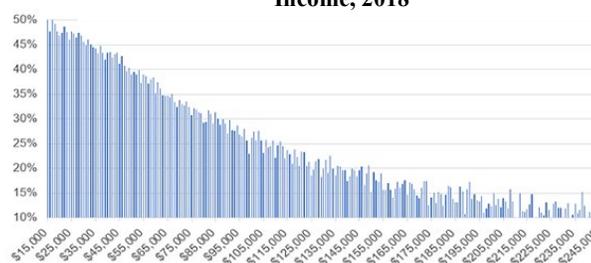
Widely accepted standards for determining monthly debt and income are critical to the prudent, consistent underwriting of mortgage loans. However, the static nature of Appendix Q has proven problematic, especially as the domestic workforce continues to shift toward employment, including self-employment, which does not result in W-2 income. Industry data shows that roughly 20% of loans that qualified for QM status because of the GSE Patch were to borrowers who are not W-2 wage earners.<sup>34</sup> Restricting QM status to a maximum 43% DTI will not only disproportionately impact consumers who are not W-2 wage earners, who may be self-employed, retired, seasonal or employed in the part-time “gig economy,” but also lower income individuals.<sup>35</sup>

**Figure 8: Share of Purchase Mortgage Applications with DTIs >43% by Employment Type and Borrower’s Annual Income**

**Share of Purchase Mortgage Applications with DTI Ratios >43% by Employment Type, 2018**



**Share of Purchase Mortgage Applications with DTI Ratios >43% by Borrower’s Annual Income, 2018**



Except for the existence of the GSE Patch (which substituted a determination that a loan was eligible for sale to one of the GSEs in place of reliance on Appendix Q), mortgage lenders would have struggled to underwrite those creditworthy borrowers for QM loans. This is one of the reasons that simply allowing the GSE Patch to expire without addressing Appendix Q would be detrimental for housing and consumers’ access to mortgage finance.

Ultimately, Appendix Q effectively pushes more consumers towards GSE Patch loans, which rely on more flexible GSE guidelines and standards instead of Appendix Q. This is, of course, in direct contravention of the Bureau’s desire to move away from GSE Patch loans. Therefore, Appendix Q should be phased out in favor of a more flexible and dynamic standard for calculating income and debt. USMI recommends that the Bureau should allow for the use of any debt and income calculation standards set forth by and approved by FHFA, FHA, VA or USDA. This is the approach set forth by Senators Mark Warner and Mike Rounds, both members of the Senate Banking Committee, in the *Self-Employed Mortgage Access Act of 2019*<sup>36</sup> and the companion bill in the House of Representatives by Congressmen Tom Emmer and Bill Foster.<sup>37</sup> This approach would dramatically reduce discrimination

<sup>34</sup> Pete Carroll, *Expiration of the CFPB’s Qualified Mortgage “GSE Patch” – Part 1*, CORELOGIC (July 11, 2019), <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-1.aspx>.

<sup>35</sup> *Id.*

<sup>36</sup> S. 540 (116<sup>th</sup> Congress). See Press Release, *Warner Re-Introduces Bills to Prepare Americans for the Future of Work*, Feb. 25, 2019, <https://www.warner.senate.gov/public/index.cfm/2019/2/warner-re-introduces-bills-to-prepare-americans-for-the-future-of-work>.

<sup>37</sup> H.R. 2445 (116<sup>th</sup> Congress). See Press Release, *Foster, Emmer Introduce Legislation to Expand Mortgage Access for Self-Employed Workers*, May 1, 2019, <https://foster.house.gov/media/press-releases/foster-emmer-introduce-legislation-to-expand-mortgage-access-for-self-employed>.

against creditworthy borrowers with non-traditional forms of income who, according to Senators Warner and Rounds, represent 30% of the labor force.<sup>38</sup>

***2(a) Whether standards that do not directly measure a consumer’s personal finances are consistent with, and further TILA’s purpose of, ensuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability-to-repay the loans.***

Some industry stakeholders have suggested eliminating specific underwriting standards that directly measure a consumer’s ability-to-repay, for example the DTI ratio, in favor of granting QM status based on the loan’s compliance with the ATR standards and pricing versus the then-current APOR. This suggestion hinges on the theory that mortgage pricing holistically reflects credit risk rationally, in all cases.

USMI, as a stakeholder primarily concerned with credit risk, believes that it is very important to note that price is not the absolute measure of mortgage credit risk because:

**Market participants consider other things beyond risk when pricing loans.** Market participants often price risk based on their own appetite for mortgage credit risk, business goals, balance sheet capacity, and broader macro-economic considerations. There are many factors that impact APRs, and thus the APOR over time, that are not related to risk, such as prepayment speeds and the value of mortgage servicing rights. There are also features (examples include a borrower’s DTI or the number of borrowers on the loan) that *are* related to risk and a consumer’s ability-to-repay that are not included in the rate. Further evidence of the inadequacy of price as a measure of risk is demonstrated by looking at mortgage rates compared to the state of the economy. Over the past 20 years, we’ve seen mortgage rates plummet during times of economic stress. In other words, during the periods in which mortgage lending is at its riskiest, borrowers get charged the least. Meanwhile, in times of plenty, mortgage rates increase.

**Market participants have the ability to manipulate pricing** and can do so in order to stay below any predefined threshold, further distorting pricing as a measure of credit risk. For example, lenders consider—and price into a loan—prepayment risk, which can diverge from credit risk in a number of different ways depending on market conditions, to meet an investor’s delivery expectations (such as to complete a security) or to meet regulatory requirements. Industry participants often consider specific factors such as their strategic views on market share, cost of capital and expected returns, and portfolio shaping that may drive pricing decisions far more than a borrower’s risk. Even the points a lender may charge at closing generally have nothing to do with a borrower’s ATR. A loan might be made to a financially vulnerable borrower at a price just within the QM range even if that borrower’s financial situation at origination might call for greater ATR Rule protections.

**The APOR for conventional loans is a survey-based estimate** of average interest rates, points, and other loan pricing terms currently offered to consumers on ≤80 loan-to-value

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<sup>38</sup> See Press Release, *Warner & Rounds Introduce Legislation to Expand Mortgage Access for Self-Employed Workers*, Aug. 28, 2018, available at <https://www.warner.senate.gov/public/index.cfm/2018/8/warner-rounds-introduce-legislation-to-expand-mortgage-access-for-self-employed-workers>.

(“LTV”) conventional loans. The Federal Financial Institutions Examination Council’s (“FFIEC”) Methodology for Determining Rates states “[t]he calculation of average prime offer rates is based on survey data for four hypothetical mortgage products.... *The survey collects data for a hypothetical, ‘best quality,’ 80% loan-to-value, first-lien loan.*”<sup>39</sup> The FFIEC specifically references “best quality” loans. While credit quality for conventional loans is currently good, loans in today’s market do have other features that add to risk layering. Further, markets in the future may have different risk features than today. APOR may not always capture or account for this risk layering.

**APOR is a trailing indicator of risk and can be procyclical.** Therefore, periods of sharply rising rates could cause temporary suspensions in lending that could impact prime loans with higher risk attributes. Further, during period of low rates and loose credit, borrowers run the risk of being overextended.

***2(b) What are the advantages and disadvantages of such standards relative to standards that directly measure a consumer’s personal finances, including DTI ratio and residual income?***

Standards that do not directly measure a borrower’s personal finances may have appeal because they avoid the need for specific calculations. But that lack of specificity means that virtually all loans that satisfy the ATR statutory standard could be deemed to be QM; an outcome that USMI believes would be at odds with the legislative and regulatory intent that led to the creation of the QM standard in the first place.

Thus, it becomes a policy question of whether underwriting standards should be imposed in order to achieve QM status. USMI strongly believes that the mortgage finance system needs underwriting guardrails to protect the financial system, taxpayers, and consumers.

***2(c) Should the Bureau retain the current line separating safe-harbor and rebuttable-presumption QMs or modify it and, if so, how?***

As takers of first loss mortgage credit risk, USMI members have a strong interest in ensuring that regulations work to encourage an appropriate balance between consumers’ access to affordable mortgage lending and consumer protections.

The ATR/QM Rule promulgated in 2013 created two types of legal presumption for QM loans: “safe harbor” and “rebuttable presumption.” Today, loans with pricing up to 150 basis points over APOR receive safe harbor status. For the reasons outlined below, USMI believes that should the Bureau continue to use an APOR-based standard for granting safe harbor the Bureau should increase the spread that is used to delineate between safe harbor and rebuttable presumption QM loans to 200 basis points over the then-current APOR to account for MI premiums and LLPAs. Adjusting the spread not only will ensure a level playing field between the conventional and FHA market, but will also ensure home-ready borrowers continue to have access to mortgage finance credit in the conventional markets. While increasing the APOR threshold for safe harbor to 200 basis points is likely the most straight forward and simplest approach to implement, another approach could be to use a similar calculation as FHA, whereby safe harbor is based on APR being within APOR, plus 150 basis points, plus MI

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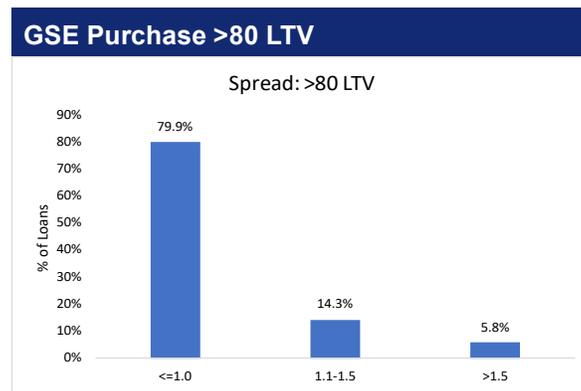
<sup>39</sup> FFIEC, Methodology for Determining Average Prime Offer Rates (last visited Sept. 13, 2019), <https://ffiec.cfpb.gov/tools/rate-spread/methodology>.

premiums. This approach limits loans with APOR spreads greater than 150 basis points to higher LTV loans.

One of the primary reasons that the Bureau should increase the APOR threshold for safe harbor to 200 basis points is because of the negative impact the current standard has on minority borrowers.

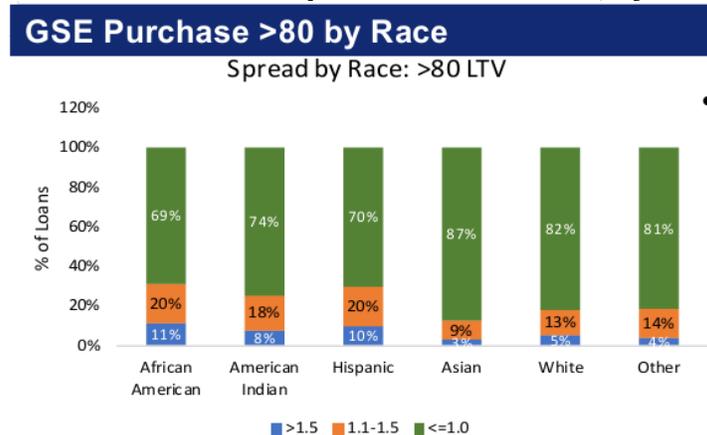
According to 2018 Home Mortgage Disclosure Act (“HMDA”) data, approximately \$11-12 billion in GSE purchase origination volume were mortgages with LTV ratios above 80 percent and pricing in excess of the “APOR plus 150 basis points” safe harbor line.<sup>40</sup>

**Figure 9: GSE Purchase Origination Volume with LTV Ratios > 80% & Pricing in Excess of the “APOR plus 150 basis points” Safe Harbor Line**



Further, HMDA data demonstrates that setting the APOR threshold at plus 150 basis points would have an outsized impact on African American and Hispanic borrowers, who were twice as likely as white borrowers to have loans with APRs in excess of the APOR plus 150 basis points spread.<sup>41</sup>

**Figure 10: Volume of GSE Purchase Data with LTV Ratios > 80 Percent and Pricing in Excess of the “APOR + 150 bps” Safe Harbor Line, by Race**



<sup>40</sup> 2018 HMDA Data, GSE purchase origination data, and Genworth MI.

<sup>41</sup> 2018 HMDA Data, GSE Purchase Data, and Genworth MI.

This impact will be even more dramatic in the future as recent changes in the GSEs’ affordable lending programs eligibility and pricing will cause more loans to fall outside of safe harbor pricing in the conventional market. For example, the table below shows the impact of the recent GSE policy changes to their flagship affordable lending products (HomeReady and Home Possible).

**Figure 11: Example of Impact of Recent GSE Policy Changes to HomeReady and Home Possible Programs and Disparity of FHA Safe Harbor Definition**

**Example: Impact of Recent GSE Policy Changes and Disparity of FHA Safe Harbor Definition**

- **Loan 1 represents a Pre-July 2019 HomeReady/Home Possible eligible loan with AMI of 90% and, therefore, is not subject to LLPAs and standard MI coverage. As such this loan remains safe harbor eligible.**
- **Loan 2 Represents a Post-July 2019 HomeReady/Home Possible eligible loan with AMI of 90%, and, therefore is subject to LLPAs and standard MI coverage. As such this loan fails safe harbor eligibility.**
- **Loan 3 Represents an FHA loan with similar loan characteristics. Because of the difference in safe harbor calculation, this loan is safe harbor eligible.**

Loan Program	Loan 1 Conventional	Loan 2 Conventional	Loan 3 FHA
Borrower Income As % of AMI	90%	90%	90%
HomeReady/HomePossible Eligible	Yes	No	NA
Property value	\$ 145,000	\$ 145,000	\$ 145,000
Loan Amount	\$ 140,650	\$ 140,650	\$139,925
FICO	685	685	685
LTV	97.0%	97.0%	96.5%
DTI	29.1	29.1	29.1
Number of Borrowers	1	1	1
Loan Purpose	Purchase	Purchase	Purchase
Loan Type	Fixed	Fixed	Fixed
Occupancy	Primary	Primary	Primary
Base Int Rate	4.50%	4.50%	4.25%
LLPA/Up front FHA MIP	0	1.50%	1.75%
Note Rate (includes LLPA / 5 year life)	4.50%	4.875%	4.250%
Origination Fee	1.00%	1.00%	1.00%
MI Coverage	25.00%	35.00%	100%
MI Rate (Monthly BPMI)	0.98%	1.21%	0.85%
APR	5.28%	5.84%	5.37%
APOR	3.79%	3.79%	3.79%
Spread over APOR	1.49%	2.05%	1.58%
Safe Harbor Eligible	Yes	No	Yes

Further, the timing of the expiration of the GSE Patch coincides with the upcoming implementation date for the Current Expected Credit Loss (“CECL”) standard, which will require financial institutions to reserve for lifetime expected credit losses upfront when they originate the loan. The new standard may impact how lenders price mortgage loans to reflect the increased reserve requirements under CECL, which could further exacerbate the disparity between the FHA and general QM safe harbor loans. Leaving the spread at 150 basis points over APOR would cause roughly \$15-20 billion of mortgages to either be rebuttable presumption QM loans or move to the FHA. It is estimated that the expansion of the QM threshold from APOR plus 150 basis points to APOR plus 200 basis reduces the market impact by approximately 98%.

Second, moving to 200 basis points over APOR would provide a more level playing field between the FHA and conventional markets. In the conventional market, the APR for high-LTV loans (compared to the average APOR for 80% LTV loans) includes the cost of MI and higher LLPAs. For example, the average LLPA for a 90% LTV loan is 50-100 basis points. The FHA safe harbor test is based on the APR being within APOR plus 115 basis points, plus annual premium. Also, the fact that FHA loans do not have risk-based LLPAs, creates an unlevel playing field when compared to the conventional market, as it creates a lender bias towards safe harbor QMs through FHA against rebuttable presumption loans in the conventional market. As a result, capping the APR at 150 basis points over APOR will result in many high-LTV loans shifting to FHA and/or could incent underpricing of credit risk to remain within the cap. This effect is more likely to occur in later stages of the credit cycle.

**Figure 12: Example of Impact of 150 Basis Point Cap and Disparity of FHA Safe Harbor Definition**

Loan Program	Conventional	FHA
Purchase Price	\$200,000	\$200,000
Loan Amount	\$194,000	\$193,000
Loan Amount (including FHA up front MI)	\$194,000	\$196,378
LTV	97%	96.5%
FICO	740	740
DTI	40%	40%
Number of Borrowers	1	1
Loan Term (in months)	360	360
Occupancy	Primary	Primary
Loan Type	Fixed	Fixed
Loan Purpose	Purchase	Purchase
Base Interest Rate	5.00%	5.00%
LLPA/Up front FHA MI premium	0.75%	1.75%
<b>Note Rate (includes LLPA / 5 year life)</b>	<b>5.25%</b>	<b>5.00%</b>
MI Rate (Monthly BPMI-standard coverage)	0.70%	0.85%
Other Costs, Points, and Fees	0	0
<b>APR</b>	<b>5.75%</b>	<b>6.03%</b>
APOR	4.15%	4.15%
Spread	1.60%	1.88%
Allowable Spread	1.50%	2.00%
<b>Safe Harbor</b>	<b>No</b>	<b>Yes</b>

In addition to considering the impact of not increasing the spread to 200 basis points on borrowers, it is also important to consider what the spread increase will mean for risk within the mortgage finance system. Looking at 2018 data provided by the Urban Institute for GSE 90-day delinquency rates by rate spread and origination period, the delinquency rates are not materially different between APOR plus 150 basis points and APOR plus 200 basis points. In fact, data suggests that the disparity in delinquency rates between loans with APOR spreads between 101-150 basis points and those with APOR spreads of 151-200 basis points is nominal, and rather the significant demarcation in the data is at 200 basis points.

**Figure 13: GSE Loan 90-Day Delinquency Rate by Rate Spread and Origination Period**

GSE Loan 90-Day Delinquency Rate by Rate Spread & Origination Period

Spread over PMMS	2009-2018
>200 bps	7.10%
151-200 bps	3.40%
101-150 bps	2.90%
51-100 bps	1.80%
<50 bps	0.80%

Source: Urban Institute analysis based on Black Knight data

***2(d) Assuming that the Bureau were to adopt standards that do not directly measure a consumer's personal finances, should the Bureau further specify or clarify the grounds on which the presumption of compliance can be rebutted?***

The distinction between safe harbor and rebuttable presumption matters. Market data makes it clear that many lenders make a determined effort to only offer safe harbor QM loans to avoid any risk of legal liability. That is not to say that there are no rebuttable presumption loans being originated today, but most mortgage lenders have demonstrated little interest in originating loans outside of the safe harbor standard, as evidenced by the Bureau's own data that only 4.2% of QM conventional loans from 2017 have rate spreads in excess of 150 basis points and are therefore rebuttable presumption mortgages.<sup>42</sup> As a result, rather than moving the market toward more rebuttable presumption loans, the current pricing line could have the effect of pushing more borrowers to FHA-insured mortgages.<sup>43</sup>

As previously stated, USMI believes that because of the flexibility of the underlying ATR standard, the heightened standards to gain QM status and the attendant protections from liability must incorporate measurable thresholds. Absent such thresholds, virtually all loans that satisfy the ATR standard could be deemed to be QM; an outcome that USMI believes would be at odds with the legislative and regulatory intent that led to the creation of the QM standard in the first place. Further, the next threshold for these QM loans would be whether they are offered legal presumption, safe harbor or rebuttable presumption.

**B. Other Temporary GSE QM Loan Issues**

***1. To minimize disruption to the mortgage market when the Temporary GSE QM loan provision expires, should the Bureau consider any other changes to Regulation Z's ability-to-repay and qualified mortgage provisions?***

USMI supports retaining the current 3% limit on points and fees, subject to adjustments for smaller loan amounts.<sup>44</sup> However, the definition of points and fees should be adjusted to ensure consistent treatment of similar fees across the various types of QMs. Currently, 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 down payments of less than 20% of the purchase price may have an option to finance with a conventional product that has private MI or an FHA product, which is backed by the government, but also requires mortgage insurance. If the consumer wanted to finance their purchase with a conventional mortgage that had an upfront, non-refundable insurance premium paid by the borrower, that premium would count toward the points and fees cap for purposes of the QM points and fees test. 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. USMI encourages the Bureau to act within its statutory authority to revise the definition of points and fees in 12 C.F.R. § 1026.32(b) to remove

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<sup>42</sup> Bureau Consumer Fin. Prot., Data Point: 2017 Mortgage Market Activity and Trends, pg. 50 (May 2018), [https://files.consumerfinance.gov/f/documents/bcfp\\_hmda\\_2017-mortgage-market-activity-trends\\_report.pdf](https://files.consumerfinance.gov/f/documents/bcfp_hmda_2017-mortgage-market-activity-trends_report.pdf).

<sup>43</sup> The U.S. Department of Housing and Urban Development (“HUD”) has a QM for mortgages that it insures and guarantees. See 78 Fed. Reg. 75215 (Dec. 11, 2013). There are differences between HUD's QM definition and the Bureau's QM definition that distort the market and, in some instances, promote regulatory arbitrage in mortgage underwriting and origination.

<sup>44</sup> 12 C.F.R. §§ 1026.43(e)(2)(iii); 1026.43(e)(3).

private MI—or at a minimum to establish a consistent application of the rule between the government insured market and the private mortgage insured market.

**2. *How much time industry would need to change its practices following the issuance of a final rule with such a new definition?***

USMI recommends that the Bureau continue to engage in a rulemaking process by issuing a Notice of Proposed Rulemaking after assessment of comments to the ANPR and, following input from industry and consumer groups, a final rule. Given that the rulemaking process could extend up until or beyond the deadline, the Bureau should extend the GSE Patch for a finite period of time to allow for implementation of the new standard. Depending on the complexity of the revisions to the definition of a QM, the significance of the penalties for a violation of the ATR rule, and the very large number of mortgage industry participants (brokers, lenders, loan purchasers, insurers, warehouse lenders, etc.) that will need to update their operations, an implementation period of 12-18 months is likely to be appropriate to afford industry participants adequate time to develop, test, and implement new standards, models, and business operations. During this transition period the QM Patch should remain intact to facilitate a smooth transition to the new standard.

Thank you again for the opportunity to comment on the “Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z),” including our recommendation to move to a QM definition that can be applied consistently throughout the mortgage market in a manner that balances prudent underwriting and credit risk management with borrower access to mortgage finance credit. USMI appreciates the Bureau’s review of this very important issue. We look forward to a continued dialogue and we would be happy to further share data and analysis with the Bureau as it considers the best alternative to replacing the GSE Patch.

Questions or requests for additional information may be directed to Lindsey Johnson, President of USMI, at [ljohnson@usmi.org](mailto:ljohnson@usmi.org) or 202-280-1820.

Sincerely,



Lindsey D. Johnson  
U.S. Mortgage Insurers