

Dated: May 26, 2017.

**Carrie Selberg,**

*Deputy Director, Office of Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 2017-11317 Filed 5-26-17; 4:15 pm]

**BILLING CODE 3510-22-P**

## COMMODITY FUTURES TRADING COMMISSION

### Market Risk Advisory Committee

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) announces that on June 20, 2017, from 10:00 a.m. to 12:30 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting at the CFTC's Washington, DC, headquarters. At this meeting, the MRAC will: (1) Respond to a presentation by the CFTC's Division of Clearing and Risk on how it conducts risk surveillance of central counterparties (CCPs); (2) discuss how to better inform the CCP regulatory framework through academic research and economic analysis; and (3) advise the Commission of the potential effects of Brexit on financial markets.

**DATES:** The meeting will be held on June 20, 2017 from 10:00 a.m. to 12:30 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by June 27, 2017.

**ADDRESSES:** The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted by mail to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Secretary of the Commission; or by electronic mail to: [secretary@cftc.gov](mailto:secretary@cftc.gov). Please use the title "Market Risk Advisory Committee" in any written statement you submit. Any statements submitted in connection with the committee meeting will be made available to the public, including by publication on the CFTC Web site, [www.cftc.gov](http://www.cftc.gov).

**FOR FURTHER INFORMATION CONTACT:** Petal Walker, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418-5060.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with

seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

*Domestic Toll Free:* 1-866-844-9416.  
*International Toll and Toll Free:* Will be posted on the CFTC's Web site, [www.cftc.gov](http://www.cftc.gov), on the page for the meeting, under Related Links.

*Pass Code/Pin Code:* 4200483.  
The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: [http://www.cftc.gov/About/CFTCCcommittees/MarketRiskAdvisoryCommittee/mrac\\_meetings](http://www.cftc.gov/About/CFTCCcommittees/MarketRiskAdvisoryCommittee/mrac_meetings).

After the meeting, a transcript of the meeting will be published through a link on the CFTC's Web site, [www.cftc.gov](http://www.cftc.gov). All written submissions provided to the CFTC in any form will also be published on the CFTC's Web site. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

**Authority:** 5 U.S.C. app. 2 § 10(a)(2).

Dated: May 26, 2017.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

[FR Doc. 2017-11312 Filed 5-31-17; 8:45 am]

**BILLING CODE 6351-01-P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2017-0014]

### Request for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of assessment of Ability-to-Repay/Qualified Mortgage rule and request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is conducting an assessment of the ATR/QM Rule under the Truth in Lending Act (Regulation Z), in accordance with section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Bureau is requesting public comment on its plans for assessing this rule as well as certain recommendations and information that may be useful in conducting the planned assessment.

**DATES:** Comments must be received on or before: July 31, 2017.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2017-0014, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2017-0014 in the subject line of the email.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

*Instructions:* All submissions should include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Sergei Kulaev, Economist; Julie Vore, Originations Program Manager; Nicholas Hluchyj, Senior Counsel; Division of Research, Markets, and Regulations at 202-435-9323.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Congress established the Bureau in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>1</sup> In the Dodd-Frank Act, Congress generally consolidated in the Bureau the rulemaking authority for Federal consumer financial laws previously vested in certain other Federal agencies. Congress also provided the Bureau with the authority to, among other things, prescribe rules as may be necessary or appropriate to enable the Bureau to

<sup>1</sup> Public Law 111-203, 124 Stat. 1376 (2010).

administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.<sup>2</sup> Since 2011, the Bureau has issued a number of rules adopted under Federal consumer financial law.

Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The Bureau must publish a report of the assessment not later than five years after the effective date of such rule or order. The assessment must address, among other relevant factors, the rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau. The assessment also must reflect available evidence and any data that the Bureau reasonably may collect. Before publishing a report of its assessment, the Bureau must invite public comment on recommendations for modifying, expanding, or eliminating the significant rule or order.<sup>3</sup>

In January 2013, the Bureau issued a rule titled "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)" to implement sections 1411, 1412, and 1414 of the Dodd-Frank Act with an effective date of January 10, 2014.<sup>4</sup> This document refers to this rule as the "January 2013 Rule." The Bureau amended the January 2013 Rule on several occasions before its effective date.<sup>5</sup> This document refers to the rule as amended when it took effect on January 10, 2014 as "the ATR/QM Rule." As discussed further below, the Bureau has determined that the ATR/QM Rule is a significant rule and it will conduct an assessment of this rule. Furthermore, the Bureau will consider certain amendments to the rule that the Bureau issued after its January 10, 2014, effective date to the extent that doing so will facilitate a more meaningful assessment of the ATR/QM Rule and data is available.<sup>6</sup> In this document, the

Bureau is requesting public comment on the issues identified below regarding the ATR/QM Rule and these subsequent amendments.

## II. Assessment Process

Assessments pursuant to section 1022(d) of the Dodd-Frank Act are for informational purposes only and are not part of any formal or informal rulemaking proceedings under the Administrative Procedure Act. The Bureau plans to consider relevant comments and other information received as it conducts the assessment and prepares an assessment report. The Bureau does not, however, expect that it will respond in the assessment report to each comment received pursuant to this document. Furthermore, the Bureau does not anticipate that the assessment report will include specific proposals by the Bureau to modify any rules, although the findings made in the assessment will help to inform the Bureau's thinking as to whether to consider commencing a rulemaking proceeding in the future.<sup>7</sup> Upon completion of the assessment, the Bureau plans to issue an assessment report not later than January 10, 2019.

## III. The Ability-to-Repay/Qualified Mortgage Rule

Congress adopted the Dodd-Frank Act in response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression. In the Dodd-Frank Act, Congress enacted a significant number of new provisions governing the origination and servicing of consumer mortgages. Among them is the ability-to- repay requirement for mortgage loans, which was implemented by the Bureau in its January 2013 Rule. The major provisions of the rule are summarized below.

### A. Major Provisions of the ATR/QM 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).<sup>8</sup> The requirement does not apply to investment loans, open-end home equity lines of credit, timeshare plans, reverse mortgages, or temporary loans.

The ATR/QM Rule describes certain minimum requirements for creditors making ability-to-repay determinations, but does not dictate that they follow particular underwriting standards. At a minimum, creditors generally must consider eight underwriting factors: (i) Current or reasonably expected income or assets; (ii) current employment status, if the creditor relies on income from employment in determining repayment ability; (iii) the monthly payment on the covered transaction; (iv) the monthly payment on any simultaneous loan(s) that the creditor knows or has reason to know will be made; (v) the monthly payment for mortgage-related obligations; (vi) current debt obligations, alimony, and child support; (vii) the monthly debt-to-income ratio or residual income; and (viii) credit history.<sup>9</sup> Creditors generally must use reasonably reliable third-party records to verify the information they use to determine repayment ability.<sup>10</sup>

The ATR/QM Rule also provides for a class of "qualified mortgage" (QM) loans, for which compliance with the ATR requirement is presumed.<sup>11</sup> 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."<sup>12</sup>

The ATR/QM Rule defines QM loans by establishing general underwriting criteria, as well as restrictions on product features and costs. Specifically, restrictions on product features include prohibitions against negative amortization, balloon payments, interest-only payments, and terms greater than 30 years.<sup>13</sup> 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>14</sup>

There are several categories of QM loans. One category is referred to as "General QM Loans." In its determination of borrower's income and debt obligations for a General QM Loan,

<sup>8</sup> TILA section 129C(a); 15 U.S.C. 1639c(a). Prior to the Dodd-Frank Act, existing Regulation Z provided ability-to-repay requirements for high cost and higher-priced mortgage loans. The Dodd-Frank Act expanded the scope of the ability-to-repay requirement to cover all residential mortgage loans.

<sup>9</sup> 12 CFR 1026.43(c)(2).

<sup>10</sup> 12 CFR 1026.43(c)(3), (4).

<sup>11</sup> TILA section 129C(b); 15 U.S.C. 1639c(b); 12 CFR 1026.43(c)

<sup>12</sup> 12 CFR 1026.43(e)(1).

<sup>13</sup> 12 CFR 1026.43(e)(2).

<sup>14</sup> 12 CFR 1026.43(e)(3).

<sup>2</sup> 12 U.S.C. 5512(b)(1).

<sup>3</sup> 12 U.S.C. 5512(d).

<sup>4</sup> 78 FR 6408 (Jan. 30, 2013).

<sup>5</sup> When the January 2013 Rule was issued, the Bureau concurrently issued a proposal to amend it, and that proposal was finalized on May 29, 2013. See 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule). The Bureau issued additional corrections and clarifications in the summer and fall of 2013. See 78 FR 44685 (July 24, 2013) and 78 FR 60381 (Oct. 1, 2013).

<sup>6</sup> In the fall of 2014, the Bureau made further amendments to the ATR/QM Rule related to nonprofit entities and provided a cure mechanism for the points and fees limit that applies to qualified mortgages. 79 FR 65300 (Nov. 3, 2014). The definitions of small creditor and rural area were

revised in the fall of 2015. 80 FR 49945 (Oct. 2, 2015). The rural area definition was further revised in the spring of 2016. 81 FR 16074 (March 25, 2016).

<sup>7</sup> The Bureau announces its rulemaking plans in semiannual updates of its rulemaking agenda, which are posted as part of the federal government's Unified Agenda of Regulatory and Deregulatory Actions. <http://www.reginfo.gov/public/do/eAgendaMain>.

a creditor must adhere to requirements provided in Appendix Q, and it must ensure that the ratio of the consumer's total monthly debt to total monthly income does not exceed 43% (DTI ceiling).<sup>15</sup> The criteria for General QM Loans further require that creditors calculate mortgage payments based on the highest payment that will apply in the first five years of the loan.<sup>16</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). This category of Temporary GSE QM loans will continue to be in effect until the earlier of: (i) The end of conservatorship; or (ii) January 10, 2021.<sup>17</sup>

The rule also provided a temporary category of QM loans for loans eligible to be insured by the U.S. Department of Housing and Urban Development (FHA Loans); guaranteed by the U.S. Department of Veterans Affairs (VA Loans); guaranteed by the U.S. Department of Agriculture (USDA Loans); or insured by the Rural Housing Service (RHS Loans) (collectively, "Temporary Federal Agency QM" loans).<sup>18</sup> The category of Temporary Federal Agency QM loans no longer exists and has been replaced by the category of Federal Agency QM loans because the relevant Federal agencies (*i.e.*, FHA, VA, and USDA/RHS) have all issued their own qualified mortgage rules since 2014.<sup>19</sup> The Bureau is not including these Federal Agency QM rules in the assessment, which is limited to the Bureau's own ATR/QM Rule.

A fourth category of qualified mortgages provides more flexible underwriting standards for small creditor portfolio loans,<sup>20</sup> and a fifth category allows small creditors that operate in rural or underserved areas to make balloon-payment portfolio loans that are qualified mortgages.<sup>21</sup>

#### B. Significant Rule Determination

The Bureau has determined that the ATR/QM Rule is a significant rule for purposes of Dodd-Frank Act section

1022(d). The Bureau believes that the initial impact of the rule on costs was muted given market conditions prevailing at the time and the Bureau's decision to create a broad temporary category of QM loans, particularly the Temporary GSE QM loans. The Bureau understands, however, that the industry's strong preference to obtain a presumption of compliance with the ATR/QM Rule by originating QM loans has resulted in meaningful changes in originations operations across the market. The Bureau also takes into consideration the possible impact of the rule on access to credit in particular submarkets and possible impacts on innovation, overall product design and competition. Considering these factors, coupled with the Bureau's more general interest to better understand how the rule's impacts vary under different market conditions, the Bureau concludes that the ATR/QM Rule is a significant rule for purposes of section 1022(d).

#### IV. The Assessment Plan

Because the Bureau has determined that the ATR/QM Rule is a significant rule for purposes of section 1022(d), the Bureau will assess the rule's effectiveness in meeting the general purposes and objectives of title X of the Dodd-Frank Act and the specific goals of the ATR/QM Rule as stated by the Bureau.

*Purposes and Objectives.* Section 1021 of the Dodd-Frank Act states that the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law 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. Section 1021 also sets forth the Bureau's objectives, which are to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services:

(a) Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(b) Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(c) Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(d) 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

(e) Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

#### *Specific goals of the ATR/QM Rule.*

Section 1402 of the Dodd-Frank Act states that Congress created new TILA section 129C upon a 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."<sup>22</sup> Section 1402 of the Dodd-Frank Act further states that the purpose of TILA section 129C is to "assure 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."<sup>23</sup>

In its January 2013 Rule implementing these TILA amendments, the Bureau recognized that "a primary goal of the statute was to prevent a repeat of the deterioration of lending standards that contributed to the financial crisis, which harmed consumers in various ways and significantly curtailed their access to credit."<sup>24</sup> The Dodd Frank Act achieves these goals in part by requiring that, for residential mortgages, creditors must make a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan according to its terms.

However, as the Bureau recognized in its January 2013 Rule, neither the statutory text nor legislative history of the Dodd-Frank Act provide any indication that Congress intended to replace proprietary underwriting standards with underwriting standards dictated by governmental or government-sponsored entities as part of the ability-to-repay requirements.<sup>25</sup> Recognizing that a variety of underwriting standards could yield a reasonable, good faith ability-to-repay determination, the Bureau promulgated the ATR/QM Rule with the goal of preserving creditor flexibility to develop underwriting standards, which is "necessary given the wide range of creditors, consumers, and mortgage products to which this rule applies."<sup>26</sup>

<sup>15</sup> 12 CFR 1026.43(e)(2)(vi).

<sup>16</sup> 12 CFR 1026.43(e)(2)(iv).

<sup>17</sup> 12 CFR 1026.43(e)(4)(ii)(A).

<sup>18</sup> 12 CFR 1026.43(e)(4)(ii)(B) through (E).

<sup>19</sup> See, e.g., 24 CFR 203.19 for HUD rules.

<sup>20</sup> 12 CFR 1026.43(e)(5).

<sup>21</sup> 12 CFR 1026.43(f).

<sup>22</sup> TILA section 129B(a)(1), 15 U.S.C. 1639b(a)(1).

<sup>23</sup> TILA section 129B(a)(2), 15 U.S.C. 1639b(a)(2).

<sup>24</sup> 78 FR 6408, 6570 (Jan. 30, 2013).

<sup>25</sup> 78 FR 6408, 6461 (Jan. 30, 2013).

<sup>26</sup> 78 FR 6408, 6579 (Jan. 30, 2013).

The Dodd-Frank Act also establishes a category of QM loans and provides that QM loans are entitled to a presumption that the creditor making the loan satisfied the ability-to-repay requirement. In promulgating regulations to implement the statutory requirement, “the Bureau has sought to balance creating new protections for consumers and new responsibilities for creditors with preserving consumers’ access to credit and allowing for appropriate lending and innovation.”<sup>27</sup> For example, by establishing the categories of temporary QM loans, the Bureau sought 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.”<sup>28</sup> By 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.<sup>29</sup>

Related objectives of the rule include ensuring accurate verification procedures and that creditors and the secondary market can readily determine whether a particular loan is a QM loan.<sup>30</sup>

*Scope and approach.* To assess the effectiveness of the ATR/QM Rule in meeting these goals, the Bureau will examine the impact of major provisions of the rule on a set of consumer outcomes, including: (i) Mortgage cost; (ii) origination volumes; (iii) approval rates; and (iv) subsequent loan performance. In addition to these measurable outcomes, the Bureau will also consider changes in creditors’ underwriting policies and procedures that were made in connection with the rule and which might affect consumer outcomes. The major provisions to be examined are: (i) The ATR requirements, including the eight underwriting factors a creditor must consider; (ii) the QM provisions, with a focus on the DTI threshold, the points and fees threshold, the small creditor threshold and the Appendix Q requirements; and (iii) the applicable verification and third-party documentation requirements.

As a part of this assessment, the Bureau will evaluate the effectiveness and impacts of the Temporary GSE QM category, to the extent that available

data and resources allow, and the Bureau may consider potential consequences of the January 10, 2021, expiration or earlier termination of this provision.

In analyzing the impact of the rule on consumer outcomes, certain categories of borrowers are of special interest (in no particular order): (i) Borrowers generating income from self-employment (including those working as “contract” or “1099” employees); (ii) borrowers anticipated to rely on income from assets to repay the loan; (iii) borrowers who rely on intermittent, supplemental, part-time, seasonal, bonus, or overtime income; (iv) borrowers seeking smaller-than-average loan amounts; (v) borrowers with a debt-to-income ratio exceeding 43%; (vi) low and moderate income borrowers; (vii) minority borrowers; and (viii) rural borrowers. The Bureau will also examine any differential impact the rule may have on these categories of borrowers, to the extent available data allow. The Bureau will also examine differential impacts of the rule on different types of creditors to the extent the data allow.

As a general matter, the assessment will associate rule requirements with observed outcomes of interest and consider counterfactual outcomes, to the extent possible. These include outcomes that did not actually occur but were considered reasonable possibilities at the time the rule was issued, and outcomes that might have occurred if only some (but not all) rule requirements had taken effect. The presence of multiple confounding factors that affect loan performance and access to credit independently of the rule do not generally allow for exact measures of the impact of the rule. In general, any statistical association between observed outcomes and requirements of the rule, while informative on the effectiveness of the rule, is not a proof of causal relationship. However, the Bureau will consider plausible scenarios, specific to each requirement, using existing mortgage datasets and data that the Bureau may reasonably collect (see more detail below regarding the Bureau’s research activities and comment requests).

The Bureau anticipates that the assessment will primarily focus on the ATR/QM Rule’s requirements in achieving the goal of preserving consumer access to responsible, affordable credit. The Bureau stated with the January 2013 Rule its belief that the ATR/QM Rule “will not lead to a significant reduction in consumers’ access to consumer financial products

and services, namely mortgage credit.”<sup>31</sup> The Bureau took into consideration, however, the potential that the rule “may have a disproportionate impact on access to credit for consumers with atypical financial characteristics, such as income streams that are inconsistent over time or particularly difficult to document.”<sup>32</sup> Likewise, in defining a QM loan, the Bureau observed that “it is not possible by rule to define every instance in which a mortgage is affordable,”<sup>33</sup> and that “an overly broad definition of qualified mortgage could stigmatize non-qualified mortgages or leave insufficient liquidity for such loans.”<sup>34</sup>

The Bureau would ideally be able to assess the effectiveness of the rule in preventing unaffordable lending. The challenge for this analysis is that credit conditions were already fairly tight at the time the ATR/QM Rule went into effect. Before the ATR/QM Rule took effect, the type of nontraditional products that had been offered prior to the Great Recession were no longer being offered, document requirements were stringent, and many creditors were applying credit overlays on top of secondary market standards. Default rates on loans originated after the start of the Great Recession through the period preceding the effective date of the ATR/QM Rule were very low.

In these market conditions, there were likely few if any loans originated where the borrower was demonstrably lacking the ability to repay or creditors failed to use underwriting factors or conduct verification in a manner that would have been generally consistent with 1026.43(c), nor is there a method of reliable identification of such loans. The Bureau seeks suggestions (and associated data) for how to study the potential effectiveness of the requirements, possibly in other market conditions, in reducing the origination of mortgage loans for which consumers lack the ability to repay.

*Specific research activities.* The Bureau plans to conduct or has begun conducting several research activities in connection with this assessment. Other research activities may also be considered as appropriate.

1. *Quantitative research on loan originations, rejection rates, and loan performance, using available mortgage data and data that the Bureau may reasonably collect.*

The currently available data includes HMDA, third party servicing data,

<sup>27</sup> 78 FR 6408, 6505 (Jan. 30, 2013).

<sup>28</sup> 78 FR 6408, 6536 (Jan. 30, 2013).

<sup>29</sup> 78 FR 6408, 6527–6528 (Jan. 30, 2013).

<sup>30</sup> 78 FR 6408, 6527 (Jan. 30, 2013).

<sup>31</sup> 78 FR 6408, 6570 (Jan. 30, 2013).

<sup>32</sup> 78 FR 6408, 6570 (Jan. 30, 2013).

<sup>33</sup> 78 FR 6408, 6505 (Jan. 30, 2013).

<sup>34</sup> 78 FR 6408, 6505 (Jan. 30, 2013).

Fannie/Freddie public loan level data, and the National Mortgage Database (NMDB).<sup>35</sup> In addition, the Bureau is planning a limited request of data directly from creditors and other stakeholders. As a preliminary matter, the following types of analyses might be informative of the impact of the rule (the Bureau will consider other analyses as well):

(a) The Bureau will utilize HMDA for an analysis of both broad market trends in origination volumes and trends for particular sub-populations, as well as any changes in the frequency of rejected applications and causes for rejections, including before and after the introduction of the rule. This analysis, although not directly informative of the impact of the rule, may indicate whether there were any significant changes in the market right after the introduction of the rule.

(b) The Bureau will use datasets, such as NMDB or servicing datasets, that contain information about debt-to-income ratios to analyze changes in origination volumes of jumbo loans with debt-to-income ratios around the 43% cutoff for QM loans.

(c) The Bureau may conduct a similar analysis with respect to the points and fees threshold, provided the available data allow. The Bureau may perform this analysis for both jumbo loans and conforming loans because conforming loans also must satisfy the points and fees test in order to receive QM status.

(d) To the extent the existing data and resources allow, the Bureau will examine rates of delinquency and default among major categories of loans: Non-QM loans; General QM Loans, and Temporary GSE QM Loans. Although the absolute default rates might have been affected by factors other than the rule, changes in relative default rates between different types of QM loans and between QM loans and non-QM loans may be informative regarding the impact of the rule.

<sup>35</sup> The NMDB is an ongoing project, jointly undertaken by the Federal Housing Finance Agency (FHFA) and the Bureau, with the goal of providing the public and regulatory agencies with data that does not include any personally identifiable information but that otherwise may serve as a comprehensive resource about the U.S. residential mortgage market. The core data in the NMDB are drawn from a random, personally anonymous, 1-in-20 sample of all credit bureau records associated with a closed-end, first-lien mortgage, updated quarterly. Mortgages, after being unlinked from any personally identifiable information or characteristics that could be traced back to any borrower, are followed in the NMDB database until they terminate through prepayment (including refinancing), foreclosure, or maturity. The information available to the FHFA, CFPB, or any other authorized user of the NMDB data never includes any personally identifiable information.

2. *Analysis of cost of credit before and after the rule, as well as recent trends.*

Among other datasets that provide insight in mortgage pricing, of particular value are data procured by the Bureau from Informa Research Services, which includes daily rate sheets for thirty to fifty top creditors, depending on the period. These data present a unique opportunity to study changes in cost of credit as well as changes in eligibility requirements that may have occurred after the introduction of the rule.

3. *Interviews with creditors regarding their activities undertaken to comply with the requirements of the ATR/QM Rule.*

Through interviews with creditors, the Bureau will obtain information on: (a) The changes that creditors might have made to their business practices in connection with the requirements of the rule, including leaving the market; (b) any reported challenges in meeting the rule's requirements, as experienced by creditors in the three years since the rule has become effective; and (c) creditors' experience with the Temporary GSE QM, including their consideration of the eventual expiration of this provision. The primary goal of the research is to understand any changes in pricing and underwriting strategies made by creditors in connection with the requirements of the rule and the possible impact on access to credit for consumers.

4. *Consultations with government regulatory agencies, government sponsored enterprises, and private market participants.*

The Bureau believes that a non-trivial share of current GSE-eligible and FHA/VA/RHA-eligible loans have a debt-to-income ratio exceeding 43 percent. Additionally, there may exist a yet unspecified quantity of GSE or government-eligible loans that meet GSE or government underwriting guidelines but do not meet Appendix Q requirements on documentation and calculation of income and debt. Many such loans would not have been QM if not for the temporary provision (although potentially a subset of those loans could have been QM if documented consistent with Appendix Q and if the DTI ratio calculated consistent with Appendix Q were at or below 43%). In consultations with regulators, GSEs, and private market participants, the Bureau seeks to obtain data to analyze, or otherwise develop an understanding, of how many loans fall within this category, how effective the provision has been in preserving access to credit, and anticipated market responses if the temporary provision were to expire.

## V. Request for Comment

To inform the assessment, the Bureau hereby invites members of the public to submit information and other comments relevant to the issues identified below, as well as any information relevant to assessing the effectiveness of the ATR/QM Rule in meeting the purposes and objectives of Title X of the Dodd-Frank Act (section 1021) and the specific goals of the Bureau (enumerated above). In particular, the Bureau invites the public, including consumers and their advocates, housing counselors, mortgage creditors and other industry representatives, industry analysts, and other interested persons to submit the following:

(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 as described in part IV above;

(2) Data and other factual information that may be useful for executing the Bureau's assessment plan, as described in part IV above;

(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;

(4) Data and other factual 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;

(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), which are listed in part IV above;

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

Dated: May 23, 2017.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Fair Lending Report of the Consumer Financial Protection Bureau, April 2017

**AGENCY:** Bureau of Consumer Financial Protection.