September 8, 2020

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

Re: 12 CFR Part 1026; Docket No. CFPB-2020-0020; RIN 3170–AA98
Submitted electronically to regulations.gov

Dear Director Kraninger:

Thank you for the opportunity to submit comments in response to the Consumer Financial Protection Bureau's (Bureau) Notice of Proposed Rulemaking for the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z).

About the National Fair Housing Alliance

Founded in 1988, the National Fair Housing Alliance (NFHA) Alliance is a consortium of more than 200 private, non-profit fair housing organizations, and state and local civil rights agencies, from throughout the United States. Headquartered in Washington, DC, NFHA's comprehensive education, advocacy, community development, member services, research, and enforcement programs help provide and ensure equal access to apartments, housing, mortgage loans, and housing-related insurance coverage for all residents of the nation. Our goal is to expand equal housing opportunities.

NFHA's track record demonstrates that fair housing and fair lending laws have made a tremendous difference in the lives of millions of people throughout the country. For example, over the past 31 years, NFHA has –

- Assisted 750,000 victims of housing discrimination
- Assisted 700 first-time homebuyers in purchasing affordable homes
- Worked with financial services partners to expand housing opportunities for millions of consumers
- Assisted in the creation of 20,000+ accessible housing units
- Facilitated 10,000 financial literacy workshops for more than 200,000 consumers
- Rehabbed 700 abandoned and blighted homes
- Assisted 800 homeowners in avoiding foreclosure through loss mitigation programs and/or home assistance grants

- Facilitated the improved maintenance of 750,000 foreclosed properties
- Helped to write and pass federal laws and rules to stop predatory and discriminatory lending practices
- Settled precedent-setting lawsuits and otherwise worked to eliminate lending and insurance redlining and discriminatory practices to substantially reduce barriers to the fair provision of mortgage loan products and homeowners insurance
- Settled a precedent-setting lawsuit against one of the nation's largest technology companies resulting in eight significant changes to address systemic discrimination and reduce algorithmic bias on the company's platform
- Led the way in advancing policies and developing resources to aid consumers in response to the COVID-19 pandemic
- Instrumental in key industry corporations reversing their positions on the disparate impact standard under the Fair Housing Act
- Created hundreds of public service announcements in 8 languages with 5 billion impressions and $163 million in donated media

If the Bureau Adopts a Pricing Approach for QM, Fair Lending Concerns Must be Front and Center

The Bureau's obligation to ensure compliance with fair lending laws, regulations and principles is paramount. Fairness is fundamental to the definition of Qualified Mortgages (QM) and Ability to Repay (ATR). As the Bureau indicated in its proposed rule and request for public comment, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act) amended the Truth in Lending Act to accomplish several major goals in response to the 2008 market collapse and foreclosure crisis. Chief among the purposes of Dodd Frank was "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."[1]

The Bureau cannot ensure loans are understandable and that they are not deceptive or abusive unless it takes measures to guarantee that loans are first fair. Discrimination by its nature requires deception and obfuscates the true terms, conditions, and pricing that should be available to a consumer. Bias in the mortgage lending process therefore, inevitably makes a loan unfair, abusive, and deceptive.

The Bureau must address fair lending issues and pricing discrimination in the new QM Rule or it will have failed millions of consumers. The need to tackle this critical issue is made even more profound by the Bureau's intention to remove the Debt-to-Income requirement from the QM definition and replace it with a pricing construct.

The Bureau's rationale is that pricing is a measurement of risk. We agree that, if a consumer is purely priced on their true level of risk and ability to repay the debt, the rate charged to the consumer is an indicator of risk. However, if discrimination is interjected into the process, the price charged to the consumer is not, in fact, a true indicator of the consumer's risk and the tenet upon which the Bureau has relied is defunct. Moreover, if a lender charges a consumer a price that is higher than the consumer's commensurate level of risk, the lender, by virtue of the

[1] *15 U.S.C. 1639b(a)(2)*

discriminatory act, is diminishing the borrower's ability to repay the debt. The Bureau must, therefore, take great pains to mitigate against pricing discrimination within the context of this proposed Rule.

Pricing Discrimination is common and conflicts with a borrower's ability to repay the loan

Pricing discrimination happens too frequently, impacting millions of borrowers however, the Bureau did not address this issue in its QM proposal. Pricing discrimination happens across the lending spectrum and can be perpetrated against consumers who receive loans priced under 150 basis points above APOR as well as loans that are priced above that threshold. Thus, both loans that carry a conclusive presumption and a rebuttable presumption of the borrower's ability to repay the loan have been subjected to pricing discrimination.

Pricing discrimination can be manifest in person-to-person transactions. For example, discretionary pricing policies and practices can often result in discrimination as loan officers, seeking to amplify their commissions, may knowingly or subconsciously, charge underserved borrowers higher interest rates. Differential or inconsistent treatment can result in pricing discrimination.

Pricing discrimination can also be perpetuated by algorithmic-based systems. There is an erroneous belief that technology cannot discriminate; that somehow computers and mathematic formulas do not see race, gender or national origin and are innocuous. Nothing could be further from the truth. Technological systems can perpetuate and amplify discrimination against people because of the traits those people possess. Algorithmic-based systems can also be designed to encourage bias.

Studies have highlighted the ability of technology to discriminate against people on characteristics that are protected by fair housing, fair lending and other civil rights laws. Researchers at Berkeley found that each year, Black and Latino mortgage borrowers are being overcharged by algorithmic-based pricing systems by more than $765 million.[2] Fair lending experts surmise that algorithmic-based systems manifest discrimination by picking up on and reflecting bias already existent in the marketplace and are penalizing consumers who do not or are not able to shop for mortgage loan products. Additionally, if these systems are designed to optimize for profit maximization, they may well overprice borrowers of color who fundamentally have restricted access to credit.

As mortgage lenders increase their use of automated systems for the pricing loans and other players, like mortgage insurance companies, also increase their use of risk-based pricing systems, it behooves the Bureau to specifically address this issue in this regulation. The Bureau must make clear that, because discrimination negatively impacts a borrower's ability to repay their loan, disrupts the ability of consumers to understand the true nature of the loans for which they qualify, and contributes to unfairness, deception and abuse, the Bureau will not tolerate pricing discrimination or other forms of bias in the lending process.

[2] Bartlett, Rober, et. al., Consumer-Lending Discrimination in the FinTech Era, Berkeley University, November 2019. Available at: https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

As the below cases indicate, discriminatory pricing remains an existential problem[3]:

United States v. Countrywide - The court entered a consent order in *United States v. Countrywide Financial Corporation, Countrywide Home Loans and Countrywide Bank* (C.D. Cal.), resolving the United States' claims of race, national origin and marital status discrimination in residential mortgage lending and providing $335 million in monetary relief for victims of discrimination. The claims in the United States' complaint, which was filed on December 21, 2011, are the largest pattern or practice lending discrimination violations of the Fair Housing Act and the Equal Credit Opportunity Act ever alleged by the Division. The United States' complaint alleges that from 2004 to 2008, Countrywide discriminated against more than 10,000 Hispanic and African-American borrowers across the country by systematically giving those borrowers subprime loans while similarly-situated white borrowers received prime loans. The complaint also alleges that Countrywide discriminated against more than 200,000 Hispanic and African-American borrowers by systematically charging higher discretionary fees and markups to those borrowers than to white borrowers. The complaint further alleges that the defendants discriminated on the basis of marital status by encouraging non-applicant spouses to forfeit their property rights as part of their spouse obtaining a Countrywide loan. The consent order provides that the $335 million settlement fund will be distributed to victims by an independent administrator, and that if Countrywide re-enters the business of home mortgage lending, it must adopt fair lending policies and procedures that will be subject to review by the Division.

United States v. C&f Mortgage Corp - The United States filed a complaint and consent order in *United States v. C&F Mortgage Corporation* (E.D. Va.), a pattern or practice case under the Fair Housing Act and the Equal Credit Opportunity Act that was referred by the Federal Deposit Insurance Corporation. The complaint alleges that C&F charged greater interest rate markups (overages) and gave lesser discounts (underages) on home mortgage loans made to African-American and Hispanic borrowers by giving its employees wide discretion in overages and underages without having in place objective criteria for setting the overages and underages. The complaint alleges that this policy had a disparate impact on African-American and Hispanic borrowers. The consent order resolves the case by requiring C&F to develop uniform policies for all aspects of its loan pricing and to phase out the practice of charging overages to home mortgage borrowers. The settlement also requires the bank to pay $140,000 to black and Hispanic victims of discrimination, monitor its loans for potential disparities based on race or national origin, and provide equal credit opportunity training to its employees. The court entered the consent order October 4, 2011.

United States v. PrimeLending - The court entered a consent order in *United States v. PrimeLending* (N.D. Tex.). The complaint alleged that the defendant violated the Fair Housing Act and the Equal Credit Opportunity Act when it charged African-American borrowers higher annual percentage rates of interest between 2006 and 2009 for prime fixed-rate home loans and for home loans guaranteed by the Federal Housing Administration and Department of Veterans Affairs than it charged to similarly-situated white borrowers. The defendant, a national mortgage lender with 168 offices in 32 states, became one of the nation's 20 largest FHA lenders by 2009. PrimeLending did not have monitoring in place to ensure that it complied with the fair lending laws, even as it grew to originate more than $5.5 billion in loans per year. The complaint alleges

[3] See DOJ Fair Lending Case Docket at: https://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1#lending

that PrimeLending's policy of giving its employees wide discretion to increase their commissions by adding "overages" to loans resulted in the alleged discrimination. The consent order requires the defendants to pay up to $2 million to the alleged victims of discrimination and to have in place loan pricing policies, monitoring and employee training that ensure discrimination does not occur in the future. This case resulted from a referral by the Board of Governors of the Federal Reserve.

United States v. AIG - The United States filed a fair lending complaint and consent order resolving *United States v. AIG Federal Savings Bank and Wilmington Finance, Inc.* (D. Del.). AIG Federal Savings Bank (FSB) and Wilmington Finance Inc. (WFI), two subsidiaries of American International Group, Inc., have agreed to pay a minimum of $6.1 million to resolve allegations that they engaged in a pattern or practice of discrimination against African American borrowers. The complaint alleges that the two violated the Fair Housing Act and the Equal Credit Opportunity Act when they charged higher fees on wholesale loans to African American borrowers nationwide on thousands of loans from July 2003 until May 2006, a period of time before the federal government obtained an ownership interest in American International Group Inc.

United States v. SunTrust - On September 14, 2012, the court entered a consent order resolving *United States v. SunTrust Mortgage, Inc.* (E.D. Va.). The complaint, which was filed simultaneously with the consent order on May 31, 2012, alleged that from 2005 to 2009, SunTrust Mortgage discriminated against at least 20,000 African-American and Hispanic borrowers across the country by systematically charging higher discretionary broker fees and retail loan markups to those borrowers than to white borrowers in violation of the Fair Housing Act and Equal Credit Opportunity Act. The consent order provides for a $21 million settlement fund and for injunctive relief specifying that SunTrust Mortgage must maintain for at least three years specific improved pricing policies and fair lending monitoring that it has adopted since the conduct at issue in the complaint occurred. The case was referred to the Division by the Federal Reserve Board.

United States v. National City Bank - On January 9, 2014, the court entered a consent order in *Consumer Financial Protection Bureau & United States v. National City Bank* (W.D. Pa.), an Equal Credit Opportunity Act and Fair Housing Act case that resulted from a joint investigation by the Division and the CFPB. PNC Bank is the successor in interest to National City Bank. The complaint, which was filed on December 23, 2013, alleged a pattern or practice of discrimination on the basis of race and national origin in residential mortgage lending. The consent order requires PNC Bank to pay $35 million to African-American and Hispanic victims of National City Bank's discriminatory conduct. The complaint alleged that National City's compensation and incentive policies resulted in African American and Hispanic borrowers being charged rates higher than White borrowers with substantially similar or inferior financial qualifications.

United States v. BancorpSouth Bank - On June 29, 2016, the United States filed a complaint and a consent order in *United States and Consumer Financial Protection Bureau v. BancorpSouth Bank*(N.D. Miss.). The joint complaint with the Consumer Financial Protection Bureau (CFPB) alleges that the bank failed to provide its home mortgage lending services to majority-minority neighborhoods on an equal basis as it provided those services to predominantly white neighborhoods, a practice commonly known as "redlining," throughout its major market areas in the Memphis Metropolitan Statistical Area; discriminated on the basis of race in the pricing and underwriting of mortgage loans originated by its Community Banking Department; and implemented a discriminatory loan policy or practice of denying applications from minorities more quickly than similarly-situated white applicants in its Mortgage Department, in violation of ECOA and FHA.

No presumption or inferences relating to fair lending

The CFPB has a separate, yet equally important, responsibility to ensure that the pricing consumers receive for mortgages does not discriminate against applicants based on characteristics protected by law. By statute, one of the functions of the Office of Fair Lending and Equal Opportunity is to coordinate the fair lending efforts of the Bureau with other Federal agencies and State regulators "to promote consistent, efficient, and effective enforcement of Federal fair lending laws." Accordingly, the CFPB should make clear, in the Rule, that the QM safe harbor established by this regulation should not be construed to create an inference or presumption that a loan satisfying the identified criteria is compliant with the Equal Credit Opportunity Act, the Fair Housing Act, or state or local anti-discrimination laws that pertain to lending. A QM safe harbor loan may still violate the requirements of the Equal Credit Opportunity Act, the Fair Housing Act or state and local anti-discrimination laws, as well as other federal and state laws regulating mortgage lending.

Diminishing negative impacts on a borrower's Ability to Repay:

As described above, the CFPB has an obligation to mitigate actions, like pricing discrimination, that can negatively impact a borrower's ability to repay their debt obligation. The CFPB should therefore limit the ability of a financial institution to receive the QM safe harbor in instances where pricing discrimination has occurred, as set forth below.

If a financial institution, or creditor as defined by the Equal Credit Opportunity Act (ECOA), originates a loan that meets the Safe Harbor thresholds outlined in the regulation and discovers a likely violation of the ECOA resulting from pricing discrimination related to the loan, the financial institution shall self-report the likely violation to the CFPB and its prudential regulator within 30 days of the discovery of the likely violation. The financial institution shall have 30 days, from the date of discovery, to remediate the harm resulting from the likely violation. Should a financial institution fail to self-report a likely violation and remediate the harm resulting from a likely violation within 30 days of the date of discovery of the likely violation, and a judicial, administrative, or regulatory body, through a final adjudication, determines that pricing discrimination in violation of ECOA has occurred, the Safe Harbor will not apply to the loan(s) related to that violation. Loans related to that violation may still qualify as QM loans, but they are not afforded a conclusive presumption of compliance.

Consider and Verify

The Bureau must ensure that all borrowers have an ability to repay their loans and cannot solely rely on the APOR pricing or even a DTI cut-off to ensure this. The Bureau must not abdicate its responsibility to ensure compliance with the ATR requirement. We urge the Bureau to include the following provisions in the final rule.[4]

- **Early defaults**: Creditors should be required to track early defaults and maintain records showing this tracking and any responses to increases in early defaults to ensure link between pricing and ATR.

- **Reasonable and good faith determination**: CFPB should affirm that creditors making QM loans must nonetheless comply with the underlying statutory requirement to make a reasonable and good faith determination of ATR.

    - Consistent with CFPB's request for examples of what "not meaningfully consider" means, outer bounds of what could be consider and verify documentation inconsistent with a reasonable and good faith interpretation of ATR:

        - 100% DTI loans, including 100% at maximum loan payment on current income, and including full DTI for all known debts, including simultaneous loans;

        - Zero or negative residual income (after-tax monthly income less debt payments), after accounting for all known debt obligations, including simultaneous loans;

        - Documentation that is falsified or subject of fraud by or with the knowledge and consent of the lender, broker, or their agents;

        - Statements by borrower that they cannot pay projected payments or can only pay the minimum ARM payment, as reflected in the underwriting file;

        - Promises by lender, broker, or their agents that the lender will refinance the loan upon any stated future event (e.g., ARM reset, financial difficulty experienced by borrower, borrower's retirement), as reflected in the underwriting file;

        - If ARMs are not excluded from QM, CFPB should state that consider and verify, like ATR, has to be based on the maximum payment in the first five years;

        - Escrow requirements must, per the statute, reflect all applicable taxes, insurance, and assessments, including any known post-closing upward adjustments reflecting a new assessment/ loss of exemptions, etc.; and

        - Statements by borrower or other documented evidence that the borrower expects a reduction of income soon unless the underwriting is done in accordance with borrower's projected income drop, as reflected in the underwriting file.

[4] The provisions under this Consider and Verify section are reflected in a joint letter submitted to the CFPB by some of the nation's leading civil rights and consumer protection agencies. NFHA is a signatory to that letter.

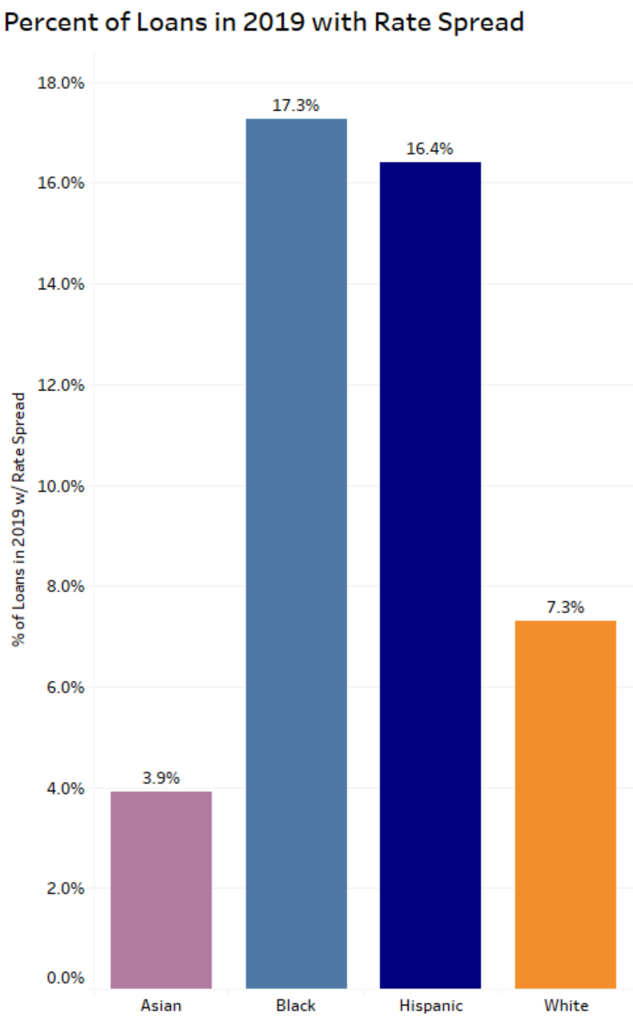
- **Record retention**: At a minimum, the creditor's record retention of how it considered and verified income or assets and DTI or residual income must meet the following standards:
    - As CFPB says, the creditor must verify anything it considers;
    - There must be detailed enough record retention that an examiner could review the underwriting to confirm that it was done in accordance with the creditor's procedures, based on verified information, and that DTI or residual income were considered;
    - The considerations for pricing and an explanation for the pricing must be maintained, including any role played by LTV or equity in the home. Examiners should be able to determine and verify from reviewing the retained documentation the basis of the pricing decision, any applicable weight given to various factors in the consideration (including minimally which factors played a role in determining pricing), and, if present, any mathematical relationships. For example, a printout from the underwriting system saying the loan is approved by itself should be inadequate to demonstrate pricing considerations, if the printout only indicates that the loan was approved and not how it was priced.
    - On any individual loan, to the extent discretionary pricing was permitted and occurred, including any deviations from rate sheets, both any rate sheets used and explanations for deviations from those rate sheets or other discretionary pricing must be retained.
    - To combat the risk of discriminatory pricing, any fair lending analysis conducted on pricing or loans originated must be retained and available for supervisory examinations on QM compliance.
    - In order to maintain the safe harbor against a borrower raising the ATR as a defense to foreclosure, documentation must be retained. If the documentation is not maintained, the creditor or assignee loses the presumption that a good faith determination of ATR was conducted.
- **No asset-based lending**: CFPB should affirm prior interagency guidance that lending on LTV/asset value alone is per se predatory and cannot satisfy the requirements of consider and verify.

The Bureau Should Consider Increasing the Safe Harbor Threshold to 200

In addition to including protections against pricing discrimination, the Bureau should consider increasing the cap on Safe Harbor loans from 150 over APOR (as proposed in the NPR) to 200 basis points over APOR. This will help provide safe expanded access to the mortgage market, particularly for borrowers of color; only minimally impact loan delinquency rates; increase borrowers' ability to shop for safe, affordable loans; and align the Safe Harbor standard across channels. Please note that NFHA's stance is that the fair lending protections included above must go hand in glove with the increased Safe Harbor threshold. The Bureau cannot increase the threshold without the fair lending provisions.

A significant number of loans are originated each year that are priced at 150 or more above APOR. Additionally, borrowers of color disproportionately receive loans with a rate spread. According to an analysis of HMDA data performed by NFHA for all first-lien mortgages, Black borrowers were overall 2.4 times more likely and Latino borrowers were 2.2 times more likely than White borrowers to receive a loan with a rate spread. Increasing the Safe Harbor cap to 200 basis points over APOR will ensure that more borrowers of color will have access to the safest loans.

Analysis of All First-Lien Loans Priced Over the Safe Harbor Threshold



Analysis of Loans Broken Down by Channel

Investor	Times More Likely for Black Consumers to Have a Rate Spread Compared to White Consumers
Farmer Mac	3.185
Freddie Mac	2.796
Fannie Mae	2.578
Non-agency	2.468
Not Sold	2.128
Ginnie Mae	1.335

Investor	Times More Likely for Latino Consumers to Have a Rate Spread Compared to White Consumers
Farmer Mac	3.359
Non-agency	2.551
Not Sold	2.325
Fannie Mae	1.926
Freddie Mac	1.826
Ginnie Mae	1.325

Source: Home Mortgage Disclosure Act Data
National Fair Housing Alliance

According to an analysis by the Urban Institute, if the Safe Harbor cap were to be raised to 200 basis points, an additional 75,265 loans that were originated in 2019 would have received the Safe Harbor designation.[5] Based on our evaluation of the 2019 HMDA data (see Tables above), a disproportionate share of these mortgages were made to borrowers of color.

Urban Institute data show that increasing the rate spread from 150 to 200 basis points only incrementally increases the risk of default by 1.6 percentage points for GSE loans and .2 percentage points for portfolio loans.[6] It is also important to bear in mind that current mortgage delinquency and default rates are historically low. The much improved cadre of mortgage loans originated post the Great Recession are largely due to the effects of the Dodd Frank Act which has helped to produce more product protections; better underwriting; and improved income, employment, and asset verifications and documentation.

Because lenders have demonstrated a propensity for avoiding loans that carry a rebuttable presumption to avoid more exposure to liability, increasing the Safe Harbor cap will expand access to credit, particularly for underserved borrowers. Consumers should have full access to the financial markets including conventional, FHA/VA/RD, conforming and non-conforming loans. The Rule should not exacerbate venue-steering. This would be the antithesis of the Dodd Frank Act which opposes lending steering. The rule should not exacerbate racial disparities in lending and should not further entrench barriers that make it difficult for underserved borrowers to access quality, affordable credit in the conventional space.

Providing borrowers of color greater access to conventional mortgages also means these borrowers will have increased access to more lenders. If the Safe Harbor cap is not raised to 200 basis points over APOR, borrowers of color will continue to have limited access to conventional lenders and will be disproportionately relegated to FHA mortgages. However, a smaller pool of lenders originate FHA loans. Raising the Safe Harbor threshold to 200 bps would expand consumer choice among lenders and product offerings. In 2019, for example, there were approximately 3,200 Home Mortgage Disclosure Act ("HMDA") reporting lenders for conventional purchase loans versus approximately 1,200 reporting lenders for FHA purchase

[5] Karan Kaul, Laurie Goodman, Jun Zhu, *CFPB's Proposed QM Rule Will Responsibly Ease Credit Availability: Data show That It Can Go Further*, Urban Institute, Table 3, page 11 (September 2020).
[6] *Id.*

loans.[7] Increasing the Safe Harbor cap opens borrowers of color up to more lenders and increases their ability to shop for loans.

The rule should not result in restricting borrowers' ability to shop for mortgages. Shopping is a huge benefit to borrowers and the Bureau should not establish a scenario in which underserved borrowers will have less access to the full panoply of mortgage lenders and products. Restricting the ability of borrowers to shop will result in added costs to consumers. This is of particular import for borrowers of color who historically have had restricted and limited mortgage options.

Another reason to adjust the Safe Harbor threshold is to align conventional and government lending pricing caps. The Safe Harbor rate spread calculation for FHA-insured mortgages is different from the conventional loan methodology. In the conventional market, the annual percentage rate ("APR") for a high loan-to-value ("LTV") ratio mortgage includes the cost of private mortgage insurance ("MI") as well as the higher fees assessed by the GSEs in the form of loan-level price adjustments ("LLPAs"). The FHA Safe Harbor test, however, is set at a level that accommodates the FHA annual MI premiums. To qualify for the FHA Safe Harbor, the APR on the mortgage cannot exceed the APOR plus the FHA annual mortgage insurance premium (currently 85 basis points) plus 115 basis points – or 200 basis points.

As illustrated in the table below, the difference in how the Safe Harbor is determined will mean that the same borrower, with the same loan product, could have a Safe Harbor loan if the insurance is provided by FHA, but a Rebuttable Presumption loan if the insurance is provided by a private mortgage insurer on a GSE loan – even though the GSE loan could lower the monthly and lifetime cost for the borrower.

[7] *Id*.

Loan Program	Conventional	FHA
Purchase Price	$200,000	$200,000
Loan Amount	$190,000	$190,000
Loan Amount (including FHA up-front MIP)	NA	$193,325
LTV	95.00%	95.00%
FICO	700	700
DTI	40%	40%
Number of Borrowers	1	1
Loan Term	360	360
Occupancy	Primary	Primary
Loan Type	Fixed	Fixed
Loan Purpose	Purchase	Purchase
Base Int Rate	5.00%	5.00%
LLPA/Up front FHA MIP	1.00%	1.75%
Note Rate (includes LLPA / 5 year life)	**5.25%**	**5.00%**
MI Rate (Monthly BPMI-standard coverage)	0.78%	0.80%
Other Costs, Points, and Fees	0	0
APR	**5.80%**	**5.98%**
APOR	4.15%	4.15%
Spread	**1.65%**	**1.83%**
Allowable Spread	1.50%	1.95%
Safe Harbor	***No***	***Yes***

Monthly PMI Payment	Monthly FHA MIP Payment
$123.50	$126.67

Source: USMI

The Bureau Must Maintain QM Safety Features

The Bureau must maintain and enhance the existing Ability-to-Repay (ATR) regulatory language as well as the existing QM statutory safe product restrictions that prohibit certain risky loan features. Those safety product restrictions include[8]:

- No negative amortization
- No interest-only payments
- No balloon payments
- No “low” or “no” documentation
- Loan total points and fees cannot exceed 3% of the loan amount, except for lower loan amounts
- Mortgage term cannot exceed 30 years
- Mortgages must be underwritten to the maximum interest rate applicable during the first 5 years of the loan
- Mortgages must take into account all mortgage-related debt obligations
- Restrictions on prepayment penalty provisions

Short-Reset Adjustable-Rate Mortgages

Short-reset adjustable rate loans can generate significant payment shock for consumers and were a major contributing factor to the 2008 foreclosure crisis. To address this concern, the statute requires that QM loans be underwritten to the maximum possible interest rate permitted under the loan in the first five years. The proposed rule reinforces this mandate with a new and unique methodology for calculating the APR for all short-reset ARMs. This approach is operationally difficult and will render some safe and affordable ARMs to be ineligible for QM status.

We propose an alternative approach that would satisfy the intent of the proposed rule to establish a clear connection between the underwriting requirement for short-reset ARMs and a pricing mechanism to reinforce that requirement. In lieu of the APR calculation using the highest rate in the first five years, the Bureau should consider simply imposing a constraint on that maximum interest rate in the first five years, using a published data set to ensure an objective measure against which the rate would be compared. Generally, the highest rate in the first five years reflects a set of rate adjustments that are subject to a cap, which is historically 200 basis points for a 5-year ARM. Therefore, we believe and recommend that a sensible, yet conservative, cap for short-reset ARMs to be eligible for QM status is to restrict the maximum

[8] See Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z). Available at: https://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf

rate in the first five years to no more than 250 basis points (not adjusted for loan size) over the Average Initial Interest Rate (AIIR) for a comparable ARM loan, which the Bureau publishes on the FFIEC web site. Such a cap would be in addition to, and not a replacement for, the overall QM cap.[9]

Most Sincerely,

President and Chief Executive Officer

[9] This proposal for short-reset ARMs is also championed in the QM Salon comment letter.