NFHA
National Fair Housing Alliance

September 16, 2019

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

Re: Advance Notice of Proposed Rulemaking
Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z)
12 CFR Part 1026; Docket No. CFPB-2019-0039
RIN 3170-AA98

Dear Director Kraninger,

Thank you for the opportunity to submit comments in response to the Consumer Financial Protection Bureau's (CFPB) Advance Notice of Proposed Rulemaking (ANPR) on the definition of the Qualified Mortgage under the Truth in Lending Act. Founded in 1988, the National Fair Housing Alliance (NFHA) Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals 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 insurance policies for all residents of the nation. Our goal is to expand equal housing opportunities. NFHA's track record demonstrates that we are making a difference in the lives of millions of people throughout the country. 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 repair 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

- Created hundreds of public service announcements in 8 languages with 4 billion impressions and $93 million in donated media

1. **Direct Measures of a Consumer's Personal Finances**

a. Should the Bureau continue to include only a DTI limit, or should the Bureau replace or supplement the DTI limit with another method?

The Bureau should not continue to include only a DTI limit in the QM definition. Not only is the DTI an inadequate predictor of risk but using a strict 43% DTI cut off has severe negative implications for borrowers of color. The 43% DTI should be eliminated from the general QM category for QM loans that are prime or near-prime, that is loans with a rate spread of 250/300 basis points over the Average Prime Offer Rate[i]. Additionally, the associated Appendix Q should be removed. However, the CFPB 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[ii]:

- 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

The Bureau may wish to extend the GSE Patch for a short period of time while undergoing this transition to avert any market disruptions.

DTI is a Less Reliable Predictor of Risk

Moreover, the CFPB must clarify provisions related to documentation and verification of income to ensure that income and assets are considered and verified. The CFPB must ensure that these standards reflect changes in the U.S. economy where an increasing number of consumers are not W-2 wage earners.

Several studies[iii] reveal that a number of other factors are better predictors of borrower risk than DTI. These include product feature, credit score, loan to value ratio, residual income, cash-flow analysis, down-payment, etc. that are superior to DTI in assessing borrower risk. In fact, an official with the Federal Housing Finance Agency reported that "FHFA does not consider DTI to be as predictive a risk factor as credit score or LTV[iv]." Moreover, DTI is often difficult to measure, particularly for people who are self-employed, are not W-2 wage earners or who live in households with multiple wage earners who contribute to sharing household expenses. An official with FHFA reflected in the Inspector General's report that "under-reporting by borrowers continues to skew the accuracy of a DTI ration.[v]"

Data show that a significant number of loans originated since the QM rule went into effect had DTIs above 43% and that, since 2013, there has been a steady increase in the percentage of loans with DTIs over 43%. For example, as the table below[vi], created by the Urban Institute, illustrates, in 2013, 33% of VA loans had a DTI over 43% and by 2018, 45.9% of VA loans had a DTI over 43%. Higher instances of loans with DTI ratios above 43% are likely due to increases in housing prices, a lack of affordable housing, the failure of consumer income to keep up with housing cost increases, rising interest rates, prevailing student loan debt and other factors.

Rental housing prices have been out-pacing consumer income increases for years. Consumers are paying a significant portion of their incomes for rental housing payments[vii]. Almost a quarter of U.S. households are severely cost-burdened paying more than 50% of their income on rental housing payments. Another quarter are moderately cost-burdened. Higher rental housing rates are causing delays in household formation and impacting consumers' ability to save for a down-payment and take care of other familial obligations. Due to rising rental cost rates and other factors, renters are more cost-burdened than homeowners in most areas. Homeowners are generally less cost-burdened than renters. It, therefore, behooves the CFPB to move toward home mortgage policies that expand sustainable homeownership opportunities for more families.

Table 1

Agency Purchase Originations with DTI Ratios over 43 Percent

	Fannie Mae	Freddie Mac	FHA	VA
2013	13.3%	14.1%	42.4%	33.0%
2014	13.6%	15.1%	42.7%	35.1%
2015	13.2%	17.2%	41.8%	36.6%
2016	13.9%	18.6%	44.7%	38.0%
2017	19.3%	21.2%	51.5%	41.9%
2018[a]	29.0%	24.9%	55.3%	45.9%

Source: Urban Institute calculations based on eMBS data.
Note: FHA = Federal Housing Administration; VA = US Department of Veterans Affairs.
[a] 2018 data are through May 2018.

While the percentage of loans with DTIs above 43% have been on the rise, loan delinquencies have not, another suggestion that DTIs are not the best predictor of risk. The below data[viii], generated by the Urban Institute, demonstrates that in 2011, 1.34% of the loans purchased by the GSEs with a DTI above 45% were 90 days delinquent. In 2016, the percentage dropped significantly to .07% for this category of loans.

The data reveal that the lending market is currently experiencing uncharacteristically low mortgage delinquency rates. This, again, despite the growing uptick in the number of loans originated above the 43% DTI cut off. Earlier this year, CoreLogic reported the lowest overall delinquency rate in more than

20 years[ix]. The report revealed that, in April 2019, only 3.6% of U.S. mortgages were in some stage of delinquency.

Table 2

90-Day Default Rate for GSE Purchase Originations by DTI Ratio, FICO Score, and LTV Ratio

	DTI Ratio			FICO Score			LTV Ratio		
	<30%	30–45%	>45%	>750	700–750	<700	<80%	80–95%	>95%
1999	2.68%	3.81%	4.39%	0.77%	1.82%	6.63%	2.59%	5.08%	5.72%
2000	2.51%	3.34%	3.53%	0.63%	1.59%	6.38%	2.26%	4.46%	5.69%
2001	2.53%	3.59%	4.05%	0.78%	1.91%	6.54%	2.38%	5.52%	6.22%
2002	2.87%	4.26%	4.84%	1.07%	2.60%	7.59%	2.84%	7.00%	7.88%
2003	3.70%	6.14%	7.05%	1.76%	4.30%	10.17%	4.27%	9.32%	11.61%
2004	5.73%	8.81%	9.95%	2.78%	6.48%	14.03%	6.81%	12.85%	15.14%
2005	7.83%	13.14%	15.67%	4.73%	11.05%	20.97%	11.00%	18.13%	20.42%
2006	9.43%	15.55%	19.22%	5.78%	13.69%	25.25%	13.62%	21.05%	27.65%
2007	9.91%	16.99%	21.95%	6.27%	14.89%	28.18%	14.27%	23.98%	29.10%
2008	4.91%	9.73%	15.03%	3.84%	10.43%	22.05%	8.33%	15.12%	15.87%
2009	0.94%	2.40%	4.13%	0.95%	3.04%	8.06%	1.94%	3.17%	2.99%
2010	0.72%	1.76%	2.13%	0.60%	2.08%	5.71%	1.29%	1.89%	3.15%
2011	0.56%	1.38%	1.34%	0.43%	1.58%	4.61%	0.99%	1.42%	1.51%
2012	0.33%	0.85%	0.66%	0.26%	0.98%	3.08%	0.54%	0.94%	1.15%
2013	0.36%	0.87%	0.54%	0.24%	0.88%	2.65%	0.54%	0.96%	1.40%
2014	0.39%	0.88%	0.54%	0.22%	0.75%	2.33%	0.58%	0.96%	1.05%
2015	0.20%	0.47%	0.26%	0.11%	0.36%	1.29%	0.29%	0.50%	0.82%
2016	0.06%	0.14%	0.07%	0.04%	0.10%	0.38%	0.09%	0.15%	0.33%

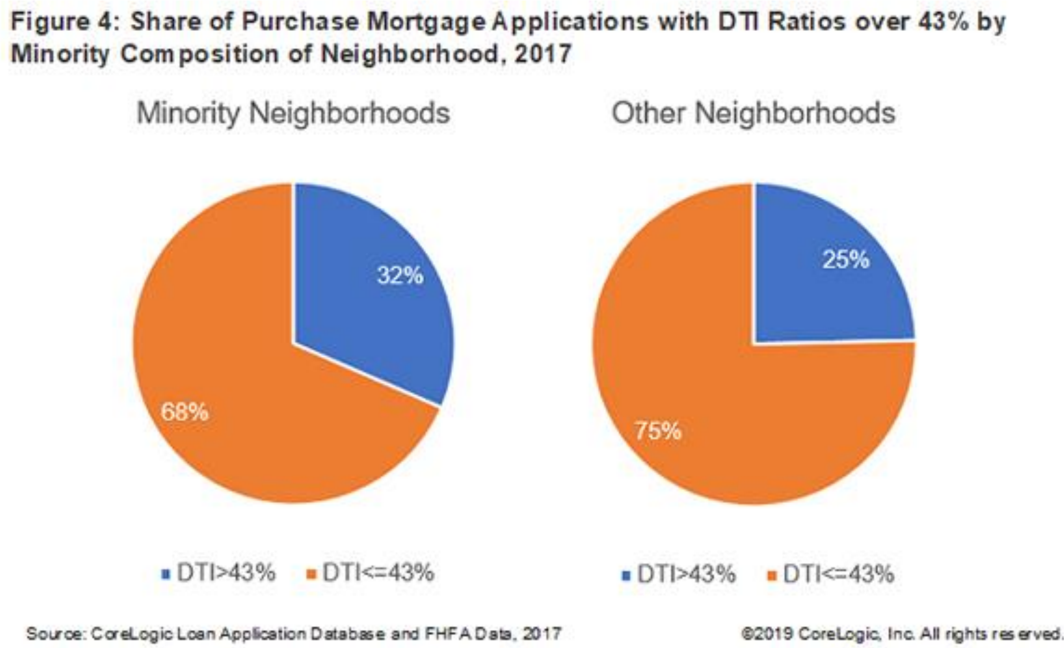
Source: Urban Institute analysis based on Fannie Mae and Freddie Mac loan-level credit data.
Note: DTI = debt-to-income; GSE = government-sponsored enterprise; LTV = loan-to-value.

Borrowers of Color are Disproportionately Impacted by the 43% DTI Cut Off

A hard 43% DTI cut off would have a deleterious effect on borrowers of color. One analysis by the Urban Institute found that Latino and African American borrowers are 1.5 times more likely to have mortgages with a DTI above 45%[x]. The Urban Institute and Recursion Co. produced analyses showing that African Americans, Asians, and Latinos disproportionately receive GSE loans with DTIs over 43%[xi] as compared to White borrowers. For example, 6.4% of GSE loans with DTIs at or equal to 43% were made to Latino borrowers. Latinos are 38% more likely to receive a loan with a DTI over 43%. Asian Americans are 34% more likely and African Americans are 29% more likely to receive a loan with a DTI over 43%. White Americans are 7% less likely to receive a loan with a DTI over 43%.

An analysis by CoreLogic reveals similar patterns – borrowers of color and borrowers purchasing homes in under-served areas are disproportionately impacted by the GSE Patch and more likely to apply for loans with DTI ratios over 43%. Based on 2017 data, Latino and African American borrowers were 1.6 times more likely than non-Hispanic White borrowers to have a DTI over 43%[xii]. The CoreLogic analysis also found that a disproportionate percentage of loans falling within the GSE Patch were located in underserved areas. The company used the Federal Housing Finance Agency's definition of "Underserved Areas" for the study. Moreover, as the graphic below depicts, borrowers purchasing a house in a community of color made up a larger share of loans above a 43% DTI.

Figure 1



Given the fair lending implications of relying on DTI ratio to determine what would constitute a Qualified Mortgage, the Bureau should opt for a less discriminatory alternative and remove the 43% DTI cut off. If the Bureau maintains other robust Ability-to-Repay requirements and enhances ATR standards, this will help ensure that borrowers are obtaining mortgages that are safe, affordable and sustainable. That the DTI is a poorer predictor of risk than other qualifiers such as product type, loan feature, and loan-to-value ratio and considering the advancements made by machine learning and artificial intelligence to help assess borrower risk, relying on the DTI standard, that exacerbates discriminatory outcomes, is irresponsible and unnecessarily harmful to consumers and the economy.

<u>Elimination of the GSE Patch Would Significantly Impact Mortgage Lending</u>

Several studies show that a significant percentage of the mortgage loans that have been originated as a result of the GSE Patch. By one analysis, 16% or $260 billion of loans originated in 2018 were QM-eligible due to the Patch[xiii]. Losing the GSE Patch would have a significant impact on the marketplace and the Bureau should not allow the Patch to expire without making changes to the QM definition to account for the potential loss.

The Bureau should also note that a sizeable portion of GSE Patch loans – 19.3% - had DTI ratios below 43%. These loans were originated to borrowers that were not W-2 wage earners. This suggests that a number of lenders relied on the GSE's QM eligibility status in order to safely extend mortgages to non-W-2 wage earners[xiv].

c. The Bureau's Consideration of Standards to Calculate and Verify Debt and Income

i. Assuming without deciding that the Bureau retains a criterion that directly measures a consumer's personal finances—DTI ratio, residual income, or some other measure—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?

Appendix Q should be removed. However, the CFPB 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. Appendix Q's cumbersome and outdated approach creates barriers to QM lending, particularly for borrowers with non-traditional W-2 income. The Bureau must enhance the ATR requirement to ensure consumers are securing safe loans. But the Bureau must enhance requirements in a way that ensures fair access for all borrowers, including borrowers of color and that recognizes advancements technology has made in the ability to adequately assess borrower risk.

Moreover, the Bureau must make provision for ensuring credit access for underserved borrowers who have, throughout this nation's entire history, accessed credit outside of the financial mainstream because of discriminatory marketplace and governmental restrictions[xv]. Certain non-traditional credit characteristics, like rental housing payment, housing payment shock[xvi] and residual income tests are highly accurate in determining the ability of these borrowers to pay their loans. NFHA commissioned the Urban Institute to conduct a study to ascertain how useful rental housing payment information is in assessing borrower risk. UI found that rental housing payment information is highly predictive and should be used to assess borrower creditworthiness[xvii].

2. Alternatives to Direct Measures of a Consumer's Personal Finances

c. Assuming without deciding that the Bureau were to adopt standards that do not directly measure a consumer's personal finances, should the Bureau retain the current line separating safe-harbor and rebuttable-presumption QMs or modify it and, if so, how?

The Bureau Should Extend the Rebuttable Presumption to All Loans or go up to 200 Basis Points Over APOR for Safe Harbor Loans with Fair Lending Protections

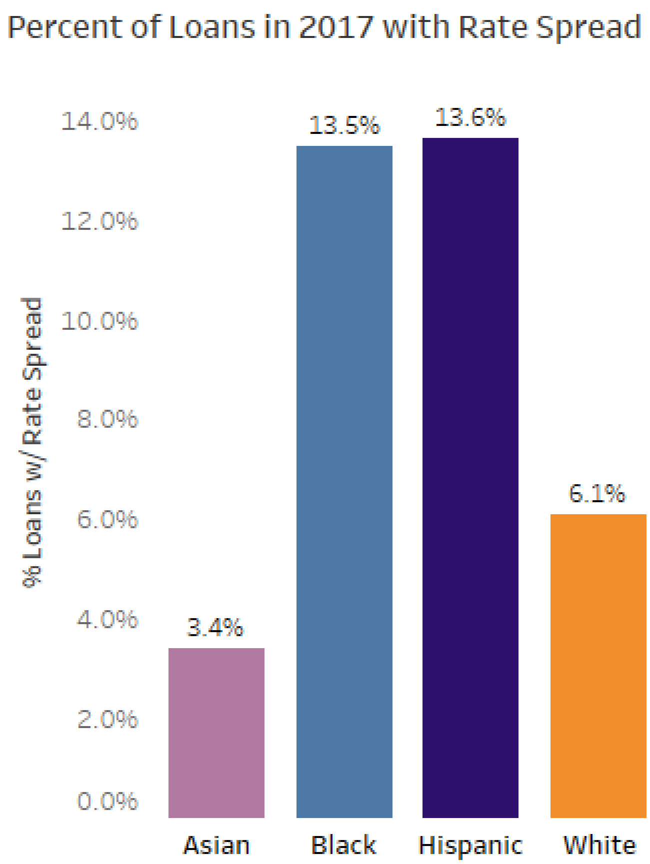
The Bureau should revisit the feasibility of removing all loans from the safe harbor. This would extend the greatest protections for consumers while allowing for marketplace innovations.

In the alternative, the Bureau should extend the QM safe harbor to loans where the rate spread does not exceed 200 basis points over the Average Prime Offer Rate (APOR). This would mean that all loans priced at or below 200 basis points over APOR would be afforded QM status and the safe harbor protection, provided the loan met the Ability to Repay and other QM requirements as we describe above.

Borrowers of Color Disproportionately Receive Loans Priced Over 150 BP Over APOR

Our analysis of the 2017 Home Mortgage Disclosure Act data reveals that LatinX and African American borrowers disproportionately receive loans priced at or above 150 basis points over APOR. Figure 2 illustrates that in 2017, 13.6% of all LatinX and 13.5% of all African American borrowers had loans with rate spreads. Alternatively, 6.1% of White borrowers had loans with spreads. This means that LatinX and Black consumers receive loans at or above 150 basis points over APOR at more than twice the rate of their White counterparts.

Figure 2



Source: Lending Patterns, 2017 Home Mortgage Disclosure Act data.

In fact, as Figures 3, 4 and 5 depict, for every investor, except for Farmer Mac, LatinX and African American borrowers received loans with a rate spread at a rate appreciably higher than that for White borrowers. For example, for first lien loans purchased by Fannie Mae, 5.58% of African American borrowers and 4.14% of LatinX borrowers have loans with spreads. Comparatively, only 2.1% of White borrowers have loans with spreads. This pattern exists with agency and non-agency loans as well as loans that are retained by the lender and not sold to an investor.

Figure 3

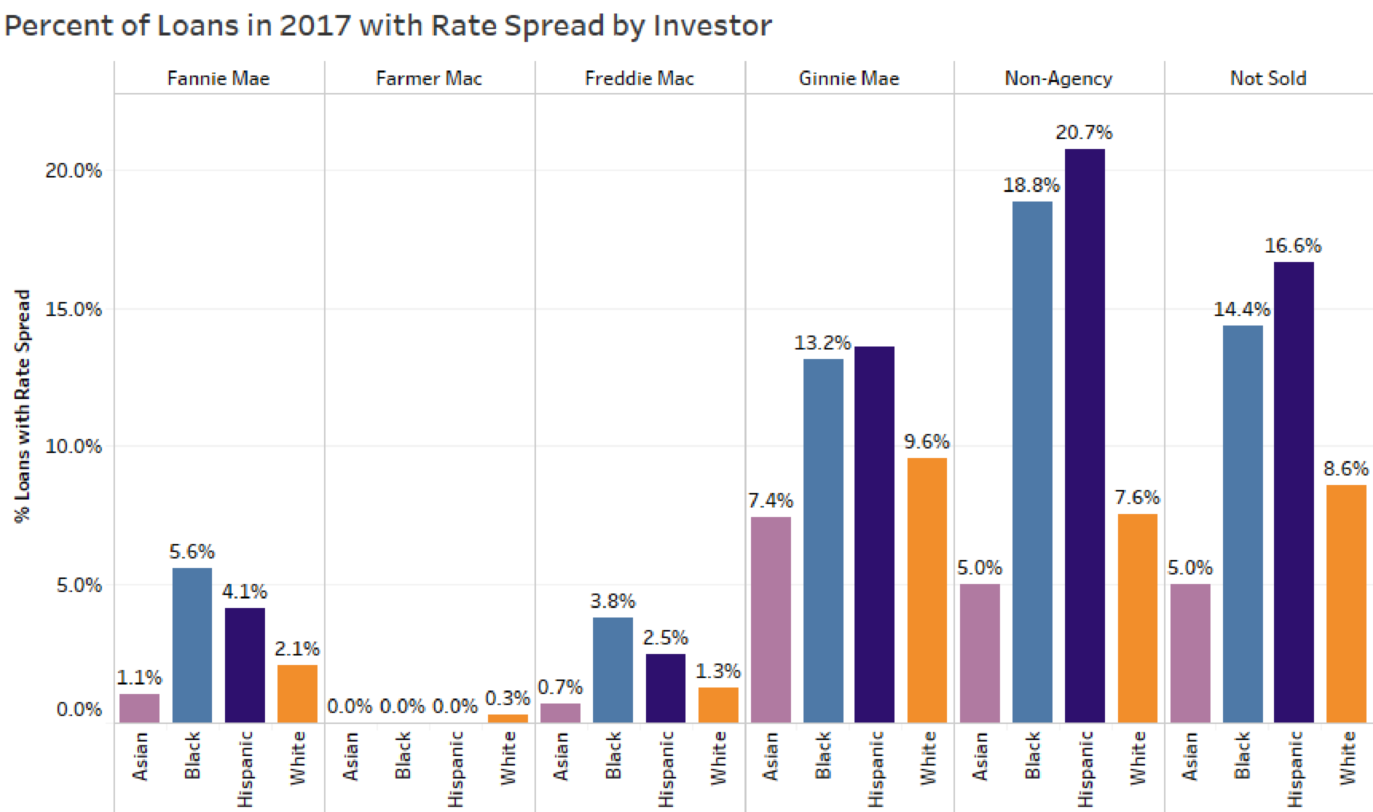


Figure 4

Investor	Times More Likely for Black Consumers to Have a Rate Spread Compared to White Consumers
Freddie Mac	2.95
Fannie Mae	2.66
Non-Agency	2.49
Not Sold	1.68
Ginnie Mae	1.38
Farmer Mac	0.00

Figure 5

Investor	Times More Likely for Latino Consumers to Have a Rate Spread Compared to White Consumers
Non-Agency	2.74
Fannie Mae	1.97
Not Sold	1.94
Freddie Mac	1.94
Ginnie Mae	1.42
Farmer Mac	0.00

Loans Priced between 150 – 100 Over APOR Perform Well

Mortgage lenders report that there is little difference in performance for loans priced between 100 basis points and 150 basis points over APOR and loans priced between 150 basis points and 200 basis points over APOR. Quicken Loans, one of the nation's largest mortgage lenders, states that an analysis of its portfolio reveals that loans priced between APOR + 150 basis points and APOR + 200 basis points "were about three percentage points more likely to be delinquent than if a loan was priced between APOR + 100 bps and APOR + 150 bps[xviii]. Quicken also found, in an analysis of conventional home purchase and refinance loans between 150 basis points and 200 basis points over APOR as compared to loans priced between 100 basis points and 150 basis points over APOR that FICO scores and average LTVs were almost the same.

Given the overall well performance of loans priced between APOR + 150 and APOR + 200, the Bureau should be satisfied that extending the safe harbor, along with the fair lending protections discussed below, should safely expand access to credit to under-served borrowers.

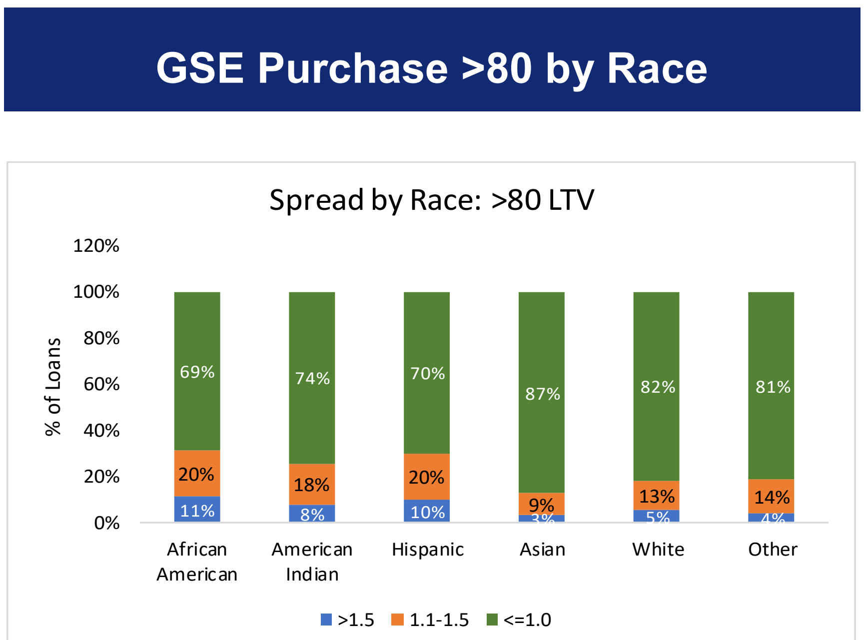
CFPB Must Ensure Fair Lending Compliance and Protect Against Over-Pricing for All Loans

It is imperative that the Bureau take steps to eliminate discriminatory over pricing abuses. Too many lenders have steered borrowers of color into higher cost loans. Also, algorithmic (Data-driven) systems perpetuate discriminatory outcomes and result in over-pricing for borrowers of color according to a recent study[xix]. Moreover, legacy systems, like automated underwriting systems, risk-based pricing systems, and credit scoring systems, perpetuate bias and disparate outcomes. In fact, this type of discrimination has been regular practice throughout U.S. history. The only real protection against over-charging borrowers of color is a robust fair lending compliance program that includes disparate impact protections and analyses. To stem the tide of over pricing discrimination, it is also imperative to maintain disparate impact protections under both the Fair Housing Act and Equal Credit Opportunity Act.

It is also important to include language in ATR that helps to also protect against abuse and predatory conduct. One of the biggest pushbacks from consumer protection groups regarding going to 200 basis points over APOR is the challenge regarding the common practice of over-pricing borrowers of color. One argument has been that capping safe harbor at 150 above APOR mitigates against the over-pricing problem. But it does not. Capping safe harbor at 150 does not in and of itself solve the over-pricing problem. Overpricing happens in the QM space just as it does in the non-QM space. As figures 2, 3, 4 and 5 illustrate Black and LatinX borrows received higher cost loans at more than twice the rate of White borrowers even for FHA and GSE-backed loans.

Mortgage insurer Genworth has conducted an analysis of this issue on loans with less than an 80% Loan-to-Value ratio with similar findings to those of NFHA's. Genworth's analysis shows that for GSE purchased loans with less than an 80% LTV, LatinX and African American borrowers are twice as likely as White borrowers to have loans with a rate spread. (See Figure 6.)

Figure 6



Source of Data: Genworth

Borrowers of color will continue to disproportionately receive loans with a rate spread for the foreseeable future. There are a confluence of marketplace dynamics driving this disparate outcome, including:

- Racial wealth gap
- Continuing impact of redlining and other forms of lending discrimination
- Impact of the GSE's Loan Level Pricing Adjustments
- Marketplace over-reliance on credit score and LTV to price borrowers
- Changes to the FHA Total Scorecard which penalize borrowers with lower credit scores and LTVs

- Recent changes to Freddie Mac's and Fannie Mae's Home Possible and Home Ready programs that change the income limit requirements from 100% to 80% of Area Median Income

All these factors contribute to borrowers of color being charged higher interest rates. Due to systemic marketplace challenges, the Bureau should consider raising the safe harbor ceiling to 200 points over APOR but the Bureau must simultaneously take every step to ensure that borrowers are not unnecessarily over-priced or that lenders take undue advantage of the higher safe harbor level. This consideration is extremely important since borrowers of color disproportionately received loans in the rebuttable presumption space and many mainstream lenders indicate they will not originate rebuttable presumption mortgages.

As the below cases indicate, we are still grappling with the over-pricing problem. See a few sample cases below that indicate over-pricing is a pattern and existential problem[xx]:

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 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.

CFPB Must Ensure Compliance with ATR and QM

The Bureau has a dual mandate regarding mortgage regulations – 1) to promote access to responsible, affordable credit, including for communities of color and low-income communities where fair and sustainable access is far too limited; and 2) to ensure that mortgage loans are only offered on terms that reasonably reflect borrowers' ability to repay. The Bureau has the distinct obligation to ensure full compliance with the ATR and QM standards and must use all its tools and authority to do so.

Ability to repay must remain an integral part of the Qualified Mortgage. Any changes to the Bureau's Qualified Mortgage (QM) rules must advance these purposes and therefore must ensure that lenders assess a borrower's ability to repay before a loan can benefit from qualified mortgage status[xxi].

Credit risk is distinct from the statutory requirement of the consideration of a borrower's ability to repay a mortgage. While ability to repay should be an important component of the credit risk assessment reflected in loan pricing, lenders must also be required to reasonably determine ability to repay, as required under the statute, and, at a minimum, consider verified debts and income in order to receive QM status. The Bureau must retain its ability to examine for ATR compliance on all loans.

Product restrictions should not be altered. The Bureau should retain and not change the statutory qualified mortgage product restrictions. Creditors wishing to offer higher risk products or features outside of the current rule's definitions should comply with the full ATR requirement.

Sincerely,

Lisa Rice, President and CEO
National Fair Housing Alliance

---

[i] Stein, Eric and Michael Calhoun, A Smarter Qualified Mortgage Can Benefit Borrowers, Taxpayers, and the Economy, Center for Responsible Lending, July, 2019. Available at: https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-a-smarter-qualified-mortgage-july2019.pdf

[ii] 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
[iii] Stein, A Smarter Qualified Mortgage Can Benefit Borrowers, Taxpayers, and the Economy
[iv] See An Overview of Enterprise Debt-to-Income Ratios, Federal Housing Finance Agency Office of Inspector General, March 27, 2019. Available at: https://www.fhfaoig.gov/sites/default/files/WPR-2019-002.pdf
[v] ibid
[vi]Kaul, Karan and Laurie Goodman, What, If Anything, Should Replace the QM GSE Patch, Urban Institute, October, 2018. Available at: https://www.urban.org/research/publication/updated-what-if-anything-should-replace-qm-gse-patch
[vii] See The State of the Nation's Housing 2019, Joint Center for Housing Studies of Harvard University. Available at: https://www.jchs.harvard.edu/state-nations-housing-2019
[viii] ibid
[ix] See "Loan Performance Insights," CoreLogic at https://www.corelogic.com/insights-download/loan-performance-insights-report.aspx
[x] Golding, Edward, Laurie Goodman, and Jun Zhu, Fannie Mae Raises the DTI Limit, Urban Institute, July 2017. Available at: https://www.urban.org/sites/default/files/publication/91936/fannie_mae_raises_dti_limit.pdf
[xi] Goodman, Laurie, New Data Confirm the Urgency of Addressing the Expiration of the GSE Patch, Urban Institute, March 25, 2019. Available at: https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch
[xii] Pradhan, Archana, 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
[xiii] Carroll, Pete, 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
[xiv] ibid
[xv] For a more robust discussion of lending discrimination and redlining and the role of the federal government in creating and perpetuating discriminatory practices, read "Long Before Redlining: Racial Disparities in Homeownership Need Intentional Policies," available at: https://shelterforce.org/2019/02/15/long-before-redlining-racial-disparities-in-homeownership-need-intentional-policies/
Read also "After Redlining: Part 2" available at: https://shelterforce.org/2019/02/21/long-before-redlining-part-2/
[xvi] Housing Payment Shock refers to the difference between a borrower's current housing payment obligation and the new housing payment obligation the borrower would be undertaking. If there is no appreciable difference between the two, the borrower will not be experiencing a housing payment shock. However, if there is a marked difference – more than 10% - 15% - the borrower may be subject to higher risk, depending on other factors. Generally, if a borrower has paid their rental housing payment obligations on time and is not experiencing any housing payment shock, the borrower will be considered low-risk.
[xvii] Goodman, Laurie, Jun Zhu, Rental Pay History Should be Used to Assess the Creditworthiness of Mortgage Borrowers, Urban Institute, April 17, 2018. Available at: https://www.urban.org/urban-wire/rental-pay-history-should-be-used-assess-creditworthiness-mortgage-borrowers
[xviii] See Quicken Loans comments re: Docket No. CFPB-2019-0039; RIN 3170-AA98; Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z).
[xix] Bartlett, Robert, Adair Morse, Richard Stanton, and Nancy Wallace, Consumer-Lending Discrimination in the FinTech Era, May, 2019.
[xx] See DOJ Fair Lending Case Docket at: https://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1#lending
[xxi] See 15 USC 1639c(b)(3).