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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Notice of Assessment of Ability-to-Repay/Qualified Mortgage Rule and Request for Public Comment

In the June 1, 2017 issue of the *Federal Register* (82 FR 25246, [click here](#)) the CFPB published the above referenced Notice of Assessment (the Notice) of the ATR/QM Rule (§1026.43 of Regulation Z), and 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. Comments must be received by the CFPB on or before: July 31, 2017. 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.

(Note: All submissions should include the document title and docket number.)

The following edited excerpts from the Notice provide an explanation for and a brief summary of the Notice:

Section 1022(d) of the Dodd-Frank Act (12 U.S.C. 5512(d)) requires: (1) the CFPB to conduct an assessment of each significant rule or order adopted by the CFPB under Federal consumer financial law (the CFPB has determined that the ATR/QM Rule is a significant rule); (2) the CFPB must publish a report of the assessment not later than five years after the effective date of such rule or order (the ATR/QM Rule's effective date was January 10, 2014); and (3) before publishing a report of its assessment, the CFPB must invite public comment on recommendations for modifying, expanding, or eliminating the significant rule or order. The CFPB plans to issue an assessment report on the ATR/QM Rule not later than January 10, 2019.

The CFPB's assessment of the ATR/QM Rule will not include the Federal Agency QM rules (*i.e.*, the QM rules issued by the FHA, VA, USDA and RHS after the effective date of the ATR/QM Rule), which replaced the ATR/QM Rule's temporary category of QM loans eligible to be insured or guaranteed by these Federal agencies.

To assess the effectiveness of the ATR/QM Rule in meeting its specific goals, which are set out in Part IV of the Notice on page 25248 of the *Federal Register*, the CFPB 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. The CFPB will also consider changes in creditors'

underwriting policies and procedures made in connection with the ATR/QM Rule which might affect consumer outcomes.

The major provisions of the ATR/QM Rule the CFPB intends to examine 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. In addition, the CFPB will also evaluate the effectiveness and impact of the temporary category of QM loans eligible to be purchased or guaranteed by either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and may consider potential consequences of the January 10, 2021, expiration or earlier termination of this provision of the ATR/QM Rule.

In analyzing the impact of the rule on consumer outcomes, the following categories of borrowers are of special interest: (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 CFPB will also examine any differential impact the ATR/QM Rule may have on these categories of borrowers and its differential impacts on different types of creditors.

To inform its assessment of the ATR/QM Rule, the CFPB 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 section 1021 of the Dodd-Frank Act and the specific goals of the CFPB. In particular, the CFPB invites the public, 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 CFPB 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 of the Notice;

(2) data and other factual information that may be useful for executing the CFPB’s assessment plan, as described in Part IV of the Notice;

(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 1021 of the Dodd-Frank Act the Dodd-Frank Act, which are listed in Part IV of the Notice; and

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

This is the residential mortgage industry's opportunity to influence the CFPB in amending the Rule so that it will better serve consumers and the industry's ability to provide affordable mortgage credit. We recommend that you take advantage of this opportunity.

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