November 28, 2022

Comment Intake Mortgage Refinances and Forbearances RFI
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Request for Information Regarding Mortgage Refinances and Forbearances; Docket No. CFPB-2022-0059

To Whom It May Concern:

The Housing Policy Council (HPC)[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's (Bureau or CFPB) Request for Information Regarding Mortgage Refinances and Forbearances (RFI). HPC is submitting two letters, this one addressing streamlined refinances and Ability-to-Repay/Qualified Mortgage (ATR/QM) and the other, loss mitigation and the Real Estate Settlement Procedures Act (RESPA)/Regulation X. We are providing a tailored response to the CFPB's questions by recommending actions the CFPB can take to permit and promote streamlined refinancing products, including consumer education and modifications to the ATR/QM rule.

The Bureau has a clear role in providing consumers with educational materials and tools to help them determine what is in their best interest. One of the Bureau's key functions is to exercise its authorities for this purpose, so that "consumers are provided with timely and understandable information to make responsible decisions about financial transactions."[2] The CFPB should use its resources to develop additional information to help borrowers understand when a refinance may be appropriate.

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[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.
[2] 12 USC § 5511(b)(1).

For example, the Bureau provides a "Your Home Loan Toolkit" that includes useful information for a consumer to better understand the home lending process and the typical costs involved.[3] The Bureau should produce a similar borrower toolkit that is focused on refinancing. The toolkit could include details on the process, typical costs involved, and factors a consumer should weigh in determining whether the refinance is beneficial, given their unique financial circumstances. Such a toolkit would align with Director Chopra's vision of financial education – "Going forward, we must focus on financial education that allows families know how to spot risks, where to get help, and how to assert their rights when something goes wrong. We need to consider what information is needed, who needs it, when they need it, and how we deliver it."[4] We encourage the Bureau to explore ways it can help educate consumers on the refinancing process and how to evaluate whether a refinance is a good fit.

Response to Barriers to Refinancing Questions

We believe there are actions the CFPB can take to pave the way for streamlined refinances, which we address in more detail below. Our comments in this letter primarily focus on the changes that need to be made to the ATR/QM Rule.

Beyond these proposed changes to the ATR/QM Rule, the CFPB should examine other regulations that may have a detrimental impact on the availability of responsible refinances, particularly for smaller balance loans. For example, the CFPB's TILA / RESPA Integrated Disclosures (TRID) and loan originator compensation rules pose unique challenges for mortgages generally, and smaller dollar loans in particular.[5] The CFPB's assessment reports recognize the negative impacts, including the process inefficiencies and increased costs that these rules impose without countervailing consumer protection benefits.

Similarly, we recommend that the CFPB consider the information presented in the HUD Office of Policy Development and Research analysis of barriers to lending on lower-priced homes.[6] The report discusses the points and fees limits in QM, as well as the APR thresholds, noting that additional research is "needed on whether these limits are disproportionately binding on small mortgage loans, hindering profitable lending opportunities, and whether the current standard appropriately balances profitability and consumer protection."[7]

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[3] https://files.consumerfinance.gov/f/201503_cfpb_your-home-loan-toolkit-web.pdf.

[4] https://www.consumerfinance.gov/about-us/newsroom/director-chopras-prepared-remarks-to-the-financial-literacy-and-education-commission/.

[5] We would direct the Bureau's staff to the letter by the American Bankers Association for a thorough overview and analysis of regulations that may have a detrimental impact on the availability of responsible refinances.

[6] https://www.huduser.gov/portal//portal/sites/default/files/pdf/Financing-Lower-Priced-Homes-Small-Mortgage-Loans.pdf.

[7] Id. at 18.

We believe that adjustments in the CFPB's mortgage rules may be necessary to increase access to streamlined refinances and assist borrowers with smaller dollar loans.

Response to Targeted and Streamlined Refinances Questions

Currently, the CFPB's ATR/QM Rule does not include provisions that would allow for a streamlined refinance to comply with the rule. The only streamlined refinances available in the market are those that are exempt from the CFPB rule (i.e., government-backed programs which are subject to their own QM rules and have a statutory exception from the income verification requirement). If the CFPB's policy goal is to increase the availability of streamlined refinances, a goal that HPC agrees with, it must modify the ATR/QM rule. Specifically, the Bureau should modify the rule to add a new category of QM loans for non-government backed streamlined refinances that meet certain consumer protection standards and the bedrock ability to repay standard. This change is necessary, as the elimination of the "QM Patch" means the GSEs can no longer offer a streamlined refinance product that meets the ATR/QM requirements.

Such a modification would meet the CFPB's policy objective of expanding access to credit in a responsible way. For many borrowers, a streamlined refinance, particularly when interest rates fall, will reduce their monthly payments, a change that may also improve loan performance. Providing a streamlined opportunity for borrowers to refinance eases the documentation burden on borrowers, simplifies loan processing, minimizes the time to close, and in so doing reduces the origination costs for borrowers and lenders alike.

In establishing a QM definition for streamlined refinances, the CFPB should align with the purpose and intent of ATR/QM – reaffirming the creditor's obligation to make a reasonable and good faith determination based on verified and documented information that a consumer has a reasonable ability to repay the loan. For the latter point, the Bureau should establish standards that do not require collection and evaluation of new financial information, but rather considers the consumer's performance on the previous loan and a requirement that the new loan result in a lower monthly payment as an indication of ATR compliance. Further, using loan performance as a proxy for ability-to-repay, is consistent with the purposes of the relevant statutory provisions; both the ATR/QM provision and the loan origination/anti-steering provision are "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."[8] In other words, we believe loan performance is a reasonable proxy to ensure compliance with the intent and purpose of the statute.

We also recommend specific consumer protections that will reinforce the ATR/QM mandate that borrowers have the ability-to-repay. We propose the following standards for a streamlined refinance QM:

[8] 15 USC 1639b(a)(2).

- Lower Monthly Payment: To qualify as a streamlined refinance QM, the refinance product must result in a lower monthly principal and interest payment over a substantially similar term as the existing loan, same amortization product, or a shorter term if possible.

- Seasoning: A seasoning requirement would establish a period over which the borrower has demonstrated ability to repay. It also would help guard against serial refinancing, which can be costly and reduce borrowers' equity in their property. HPC proposes a 6-month seasoning requirement for a loan to be eligible for a streamlined refinance QM. This requirement, coupled with the payment history detailed below, would allow the consumer to demonstrate their ability to repay their loan. In other words, actual experience of successful payment of a higher monthly payment may reasonably be presumed to demonstrate a borrower's ability to repay a new, lower monthly payment.

- Payment History: To qualify for a streamlined refinance QM, the eligibility should include payment history that reflects an ability to repay the existing loan. Such a requirement is aligned with the current ATR standards, as timely payments for a significant period may be evidence that a creditor's ATR determination was reasonable and in good faith.[9] HPC proposes a payment history standard of the borrower having no more than one 30-day delinquency in the last 12 months. Additionally, the borrower must be current at the time of application. If the Bureau adopts this type of payment history requirement, there is no need for a fully documented underwriting process, as the borrower has already proven through their payment history that they can afford the current loan with the higher payment, and therefore can afford the new loan with the lower payment.

- Limitations on cash-out: Consistent with government streamlined refinance programs, the CFPB should consider limitations on cash-out. This would reinforce continued ability to repay and transparency in support of the CFPB prohibition on unfair, deceptive, or abusive acts or practices ("UDAAP"). We recognize an allowable de minimis cash back may be necessary. For example, for FHA's streamlined refinance, cash in excess of $500 is prohibited, but mortgagees may reduce the borrower's principal balance on the loan to satisfy the $500 limit.

The features outlined above would be in addition to the product features of General QM, including regular periodic payments, no balloon payments, total points and fees that do not exceed 3 percent, and a term that does not exceed 30 years.

Response to Potential New Products to Facilitate Refinances Questions

To facilitate product innovation and introduction of new products that facilitate refinances, the Bureau should review the existing regulations to determine what requirements

[9] 12 CFR 1026.43(c)(1), Supp. I., comment 43(c)(1)-1.ii.A.1.

constrain the development of new features, new forms of underwriting, or new ways to deliver products to consumers.

To do this, the Bureau should engage with FHFA, GSEs, FHA, VA, USDA, and private investors, parties that will influence and/or drive innovation and exploration of new products. Regulatory elements that may impose barriers to new products may include TRID, as new products may pose some unique challenges in the disclosure regime, and the pricing elements of QM, as such products would likely involve substantial investor premiums to be attractive in the secondary market. Said in another way, to the extent to which the Bureau wants to monitor program and product development, the Bureau should engage with the GSEs, other government agencies, and private investors, to identify and eliminate any Bureau regulatory provisions that impede product development without countervailing consumer protections.

Yours truly,

Edward J. DeMarco
President
Housing Policy Council