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July 31, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

RE: RFI Regarding Ability-to-Repay / Qualified Mortgage Rule
Docket No. CFPB-2017-0014

Dear Ms. Jackson:

The Housing Policy Council of the Financial Services Roundtable[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's (CFPB / Bureau) Request for Information (RFI) on the proposed assessment of the Ability-to-Repay (ATR) / Qualified Mortgage (QM) rule.[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act / the Act) requirement to evaluate all significant rules within five years of promulgation reflects the lawmakers' uncertainty regarding regulatory impact on both consumers and markets and willingness to change course, as necessary. HPC members value this statutory intent and, therefore, take very seriously this RFI process.

To ensure that the Bureau performs the ATR / QM rule assessment in accordance with this original statutory intent, HPC members request that the Bureau address all of Title X's statutory purposes and objectives, as required by the Act.[3] The scope proposed in the RFI focuses the review on a narrow set of individual consumer outcomes, associated with only two of these statutory objectives, and, in so doing, would omit the impact on the industry and marketplace. A broader focus is critical because the QM definition under the current ATR/QM regulation, by restricting the lenders' application of critical risk controls, has constrained the market in a significant way that will not be visible if the CFPB assessment does not include a purposeful focus on the consequences of dictating underwriting terms and pricing in law and regulation. The three statutory objectives that were excluded from the proposal address these concerns in an unambiguous manner.

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[1] The Housing Policy Council (HPC) is a division of the Financial Services Roundtable. Our members are 32 of the leading national mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. For additional information, visit: http://www.fsroundtable.org/category/hpc/
[2] 12 C.F.R. § 1026.43.
[3] 12 U.S.C. § 5512(d).

To explain, HPC is concerned that the Bureau's proposed assessment methodology will rely on four critical measures, designated "consumer outcomes" in the RFI: a) mortgage cost, b) origination volumes, c) approval rates, and d) subsequent loan performance. The measures themselves could be used to perform a broad-based evaluation, to capture and consider the substantial impact of the regulation on lenders and the health of the market. However, the narrow CFPB interpretation of these measures as "consumer outcomes" relegates the evaluation to a consumer-only orientation.

HPC believes that the limited focus on consumer outcomes stems from the exclusion of three of the five Dodd-Frank Title X objectives, a deficiency that will influence and shape the findings from the assessment to distort the conclusions. Two of the five objectives spelled out in the title[4] focus on individual consumers, but three of the statutory objectives stipulate the Bureau's role and responsibility to support the broader marketplace. To cite all five objectives from the law, CFPB must ensure that: (1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) 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 (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

The omission of three of the Dodd-Frank objectives impairs the methodology in two significant ways: 1) the proposed methodology will drive toward a set of conclusions that are artificially and unnecessarily constrained; and 2) the assessment proposal does not fulfill the original intent of Congress.

HPC members believe that these deficiencies are significant enough to undermine the CFPB's ability to satisfy the statutory requirement. However, we consider the four proposed measures themselves to be sufficiently broad that all four could be used, under a revised evaluation methodology, to reach a comprehensive understanding of the rule's impact on lenders and the market as well as individual consumers. We therefore recommend that CFPB revise the assessment plan to incorporate this broader perspective, in compliance with the law, without republication for comment.

[4] 12 U.S.C. § 5512(d), Pub. L No. 111-203, § 1021.

Administering QM Today: Expanding Access to Credit

In addition to this specific concern with the proposed assessment plan, HPC would like to share some initial thoughts on the impact of the regulation, to provide some context for CFPB to consider when revising the assessment methodology and ultimately, the QM regulation itself. We commend the Bureau for making rational and appropriate policy choices to fulfill the goals of a challenging statute. In the aftermath of the crisis, under pressure to produce an effective regulation quickly within mandatory deadlines, the Bureau was very thoughtful and constructive.

That said, market conditions have changed substantially since the regulation was published. Today, the primary policy concern is borrower access to credit, particularly for first-time homebuyers, low-to-moderate income (LMI) borrowers, and Hispanic and African-American borrowers, all of whom have challenges meeting traditional underwriting criteria. From this perspective, the terms of the QM definition in the regulation are ripe for reconsideration. And, from this fresh perspective, several key policy decisions that were made in the aftermath of a financial crisis in a mortgage market still recovering from the wreckage now appear to be overly-restrictive.

It is our intent that these HPC comments, which we believe provide a new outlook on the law and regulations, will be used by the Bureau to reshape the 5-year assessment plan and the ultimate evaluation, which should incorporate this type of industry insight. We highlight three themes that we think are important for CFPB to consider and then briefly describe two alternative formulations for the QM regulation. Since the development of these options emerged in the preparation of this response, HPC members have not yet reached consensus on these alternatives. We believe that offering each of them here, however, may advance a broader policy discussion and benefit CFPB's own assessment. We plan to develop an HPC white paper in the near future, to expand upon these initial thoughts.

I. *Preserve Core Principles of Title XIV*

The Dodd-Frank Act authorized the CFPB to establish a set of rules to deter specific types of mortgage lending practices, by defining a new class of "qualified mortgages" that would be safeguarded from legal liability. The law set forth four types of conditions to qualify as QM – prohibited loan features, specific required underwriting criteria, documentation requirements, and loan fee caps. The challenge for the Bureau was to establish the parameters for safe, fairly-priced, and suitable mortgage loan products without locking down a set of inflexible and stringent mortgage underwriting terms that could prevent borrower access to credit.

The key objective of the law was to establish strict limits and/or significant penalties for certain lending products and practices that were being used inappropriately to reach unsuspecting borrowers who were naïve to the risks associated with the loans. Most notably, the law targeted: a) deep subprime lending, where lenders were charging excessively high interest rates that may or may not have been necessary to compensate for projected risk of loss; b) lending products that were offered to borrowers without any or with limited documentation and therefore no real assessment of a borrower's capacity to repay, such as Alt-A loans; and c) mortgages with negative or no amortization, such as option ARMs, where loan balances increase over time, stripping away accumulated home equity and potentially exceeding the property value.[5]

The statute envisioned an incentive-disincentive construct, where the QM definition would motivate lenders to dramatically increase their traditional prime mortgage originations. Among the loan features that the law required were a prohibition on terms longer than 30 years and a points and fees cap of 3 percent of the total loan amount. The listing of such terms was not exhaustive, however, to leave the CFPB with the discretion to define QM to be consistent with the full set of statutory goals, such as ensuring access to credit and facilitating consistent enforcement across the industry.

The CFPB was not required to establish comprehensive underwriting guidance and the law clearly stipulates that the CFPB rules were to be designed in a manner that would not unduly restrict innovation and competition. However, the confines of the terms that the CFPB set at that point in time have affected the consumer market, by restricting lending activity.[6] Given that the law permits tremendous latitude and discretion to the CFPB,[7] the Dodd-Frank Section 1022 assessment must carefully evaluate what aspects of the rule should now be revised or removed, to address the existing set of market conditions.

For HPC members, however, such change will not and should not alter the fundamental intent of the law, which remains critically important to preserve – to minimize and prevent misuse of the three types of lending products and practices described above and encourage traditional prime lending. HPC members wholly embrace this intent and the ideas and recommendations that we propose here protect and promote the foundational principles of the law.

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[5] 15 U.S.C. § 1639c(a), Pub. L. No. 111-203, § 1411.

[6] *See*, e.g., *Assessing the Effects of Consumer Financial Regulations: Hearing Before the S. Comm. On Banking, Hous. & Urban Affairs*, 115th Cong. (2016) (statement of Todd Zywicki, Professor of Law and Executive Director of the Law and Economics Center, George Mason University School of Law); Brena Swanson, *Dear CFPB, Here's the Reality of How Regulations Impact Credit Unions*, Housing Wire, June 2, 2017; Letter from Jim Nussle, President & Chief Exec. Officer, Credit Union National Association, to Richard Cordray, Director, Consumer Fin. Protection Bureau (June 1, 2017); Diane Katz, Heritage Foundation, *A Better Path for Mortgage Regulation*, Feb. 28, 2017.

[7] 15 U.S.C. § 1639c(b)(3)(i).

II. *Restrictions on Lending Activity – Striking the Right Balance*

The statute establishes legal liability as the primary means to influence private lending practices and activities, based on the theory that explicit risk exposure to a borrower's right to take legal action would naturally deter lenders from engaging in the problematic lending practices targeted by the law. This formulation, driving behavior through legal risk and severe penalties, is a common regulatory tactic and conceptually makes sense.

However, this type of approach places tremendous pressure on a regulator to calibrate the policy parameters and restrictions perfectly, to prevent disruption to the marketplace. For the CFPB, the QM standards needed to embrace the flexible nature of traditional underwriting, where various borrower and property characteristics are weighed simultaneously to quantify and minimize risk, and yet, establish certainty through a "bright-line" definition that would allow for clear protection from and defense against legal action.

Confronted with this difficult task, CFPB tackled the targeted products and practices first:

- To signal caution to lenders when underwriting subprime loans, the CFPB set a QM rate cap of 150 basis points over the Adjusted Prime Offer Rate (APOR), above which lenders would be exposed to a more limited form of consumer litigation (i.e., rebuttable presumption of compliance).
- To conservatively address borrower affordability, a core principle of the regulation, and the concerns with Alt-A no-doc lending, the Bureau established a 43 percent debt-to-income ratio (DTI) with qualification, documentation, and verification standards for determining a borrower's monthly debt and income, codified as Appendix Q to Part 1026.
- To constrain negative amortization, the Bureau relied on the liability standard itself, allowing for no legal protections for lenders who choose to originate such loans.

To delineate the documentation requirements for the 43 DTI standard, CFPB included Appendix Q in the regulation. Unfortunately, Appendix Q was borrowed from a set of static, vague, and outdated manual underwriting guidelines once used by the Federal Housing Administration (FHA). Amongst the many problems with Appendix Q, the standards do not reflect today's employment and income trends and documentation

standards, let alone the technological norms for compiling and verifying this information and determining the borrower's capacity to repay the loan. Appendix Q has posed a problem to the industry since the time of publication.

The Bureau understood the inherent problems with Appendix Q and the 43 percent DTI and crafted a temporary, but effective workaround solution - the GSE QM Patch. Under the Patch, all mortgages *eligible* for delivery to Fannie Mae and Freddie Mac are granted QM and, when priced within the 150 over APOR threshold, safe harbor status. The Patch enables lenders the latitude to use not only GSE eligibility standards, but also the GSE underwriting tools, to produce well-balanced and defensible mortgage risk decisions, consistent with existing practice. In essence, the new GSE QM Patch combined underwriting flexibility with a "bright line" standard to allow lenders to reach deeper into the population of creditworthy borrowers.[8]

The decision to include the GSE QM Patch successfully prevented significant disruption in the mortgage market and enabled lenders to continue to originate loans seamlessly, as there was no need to re-tool for new underwriting standards and pre-existing technology could be deployed. Of equal importance, the Patch permitted responsibly underwritten loans to be made that exceeded the 43 percent debt-to-income ratio threshold by recognizing prudent standards of the GSEs while in conservatorship.

One consequence of the GSE Patch, however, is that any loans whose balance exceeds the GSE statutory loan limits are not eligible.[9] In other words, loans that may meet the underwriting standards of the GSEs, but that have high balances, cannot receive QM safe harbor status. Portfolio lenders may feel comfortable putting such high-quality, well-underwritten loans on their balance sheets, but the non-QM impairment has made the investment community reject these loans for securitization. Thus, this particular feature of the QM regulation has contributed to the retarded recovery of the Private Label Securities (PLS) market (in addition to a number of other structural issues that are affecting this segment). HPC's proposals address this issue and the asymmetry it presents to the marketplace.

III. *Pricing as a Risk Management Lever – Benefits of More Latitude*

[8] The QM law established a carve-out for government lending programs, to be promulgated outside of the CFPB QM regulation. Because these programs are subject to distinct rules and oversight, they are *not* addressed in this letter. However, the HPC paper on QM will address one significant problem with the government lending carve-out. Under the distinct rules set by government agencies, insurance premiums and guarantees are not subject to the QM points and fees cap of 3 percent, which sets forth an unfair and inappropriate pricing differential between government and conventional loan products.

[9] To receive QM safe harbor designation, these loans must not exceed the 43 DTI ratio, meet the documentation requirements of Appendix Q, and be within the pricing cap.

To qualify a prospective borrower for a mortgage, the lender weighs, projects, and offsets the frequency and severity of loss associated with the individual and the property, and the price that can be charged. Pricing is used to compensate for risk that cannot be minimized and managed through the underwriting (generally performed by rules engines in automated underwriting systems rather than cumbersome manual processes).

To be clear, the lender is determining the likelihood that the borrower will repay to predict and calculate the *frequency* of loss and the value of the property to project the *severity* of the loss. The credit and collateral risk is minimized and managed through the underwriting policies and associated controls and pricing is applied to cover and compensate for risk that cannot be removed from the transaction through the underwriting.

To achieve safe harbor designation, the QM regulation sets a limited pricing cap of 150 basis points over APOR, which prevents the pricing lever from moving sufficiently to reach the full population of creditworthy borrowers. Given the market discomfort with the legal risk of rebuttable presumption (in contrast to the investment community's unequivocal embrace of safe harbor) the cap functions as a tight control that dictates and constrains how much risk can be covered by the rate. As a result, the lender must set the underwriting dials, using credit overlays, to deny any loans that could otherwise be acceptable at a rate greater than 150 bps over APOR.

The Federal Reserve itself recognized the constraining nature of this pricing limit, in 2008, when issuing the Regulation Z Truth in Lending Act rules. The Board stated: "For all of the above reasons, there is inherent uncertainty as to what APR threshold would perfectly achieve the objectives of covering the subprime market and generally excluding the prime market. In the face of this uncertainty, deciding on an APR threshold calls for judgment. As the Board stated with the proposal, the Board believes it is appropriate to err on the side of covering somewhat more than the subprime market."[10]

HPC Options for CFPB Consideration

As cited above, Section 1639(b) of the Dodd-Frank Act[11] provides the CFPB with latitude to suppress or override provisions of the QM law and implementing regulations (emphasis added): "The Bureau may prescribe regulations that **revise, add to, or subtract from the criteria that define a qualified mortgage** upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this

[10] Truth in Lending, 73 Fed. Reg. 44522, 44533 (July 30, 2008) (to be codified at 12 C.F.R. pt. 226).
[11] 15 U.S.C. § 1639c(b)(3)(i).

section, necessary and appropriate to effectuate the purposes of this section and section 1639b of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections." We would advocate the CFPB pursue changes in the regulation using this provision.

Below are two options that HPC will explore further in an upcoming white paper, to be published as part of a thought leadership series on various regulatory and housing finance reform topics. As noted above, since these options emerged during the development of this response, some HPC members prefer one approach or the other (or both) over the status quo.

Option 1: Expand the GSE Patch to Jumbo Loans

HPC proposes that the CFPB consider extending the GSE QM Patch, with its many marketplace benefits, to the portion of the market now excluded, jumbo lending. In practical terms, this approach would require that the QM regulatory language be modified to explicitly allow loans that, absent the loan amount, would be eligible for delivery to the GSEs, in accordance with the GSE rules and underwriting standards. In fact, GSE technology today can be used to perform an automated assessment for jumbo loans. The tools will offer a risk finding, then generate a condition / stipulation of ineligible based on the loan amount.

To-date, HPC has advocated for a permanent GSE QM Patch or a longer sunset period. This position is based on the concerns described above; striking the right balance between underwriting flexibility, yet "bright line" clarity to achieve safe harbor status is critical. In spite of this pragmatic position, HPC recognizes the significant shortcomings of the GSE QM Patch – including the exclusion of a segment of the market and continued reliance on the GSE technology.

The GSE QM Patch, conceived as a temporary measure to assist the lending community through full adoption of QM during a period of market fragility, is now the primary vehicle for most home lending activity. The obvious benefit is that the QM Patch allows lenders to make loans to borrowers in excess of the 43 percent debt-to-income threshold with a safe harbor designation, if priced within the cap.

The Patch offers other critically important benefits to lenders, as well. For example, the Patch gives lenders the ability to rely on automated tools to compile and validate borrower financial information as well as to quickly and easily determine borrower eligibility in accordance with the GSE underwriting standards. And, the GSE QM Patch permits the GSEs to innovate in a manner that Appendix Q certainly does not. In fact, the GSEs have been updating their underwriting standards and technology

tools to consider alternative measures of borrower creditworthiness, with all new product qualifying for QM status[12]

While it continues to be the case that the Patch serves as the most practical way to originate QM safe harbor loans without significant effort, the asymmetry created is unacceptable. The Patch protects and promotes GSE lending at the expense of recovery of a more balanced system, where private lending is not disadvantaged.

That said, today, loans with balances that exceed the GSE statutory loan limits, even when underwritten to GSE standards, are excluded from the GSE QM Patch and its automatic safe harbor protections. Therefore, to achieve safe harbor status, jumbo loans must have DTIs at or below 43 percent, be validated in accordance with Appendix Q, and be priced at or below 150 basis points over APOR. Clearly, lenders originate jumbo loans that meet these conditions, but the more restrictive qualifying terms create an unnecessary and unfair discrepancy that affects securitization. To date, portfolio lenders have been willing to hold these high-quality loans on their balance sheets. Investors, however, are reluctant to accept assets into securities with this non-QM impairment and we believe that this investor aversion has stymied PLS market recovery (in addition to other structural problems).

For this reason, among others, the Housing Finance (and GSE) Reform effort should take into consideration the implications of the GSE QM Patch and the general reliance of the industry on the GSE standards, practices, and technology, including the GSE automated underwriting tools. HPC plans to make this topic an area of focus for a white paper as well, to contribute to and help advance the very constructive policy dialogue already underway on Capitol Hill today, thanks to strong Congressional leadership.

What HPC members are recommending for consideration through extension of the Patch, is based on the impact we have seen to-date. The benefits of the Patch are significant for consumers and lenders alike and we believe that these benefits should be extended across the full marketplace. In order to achieve sustainable market recovery, with liquidity flowing freely into all segments of the marketplace, the GSE QM Patch should be applicable for all jumbo lending, both those loans that go into portfolio and those that could go into securities.

Option II: Streamline the QM Regulation; Eliminate GSE Patch and Appendix Q

The intent of the law – to encourage traditional product types, prevent equity stripping, discourage deep subprime product pricing, and eliminate no- or inadequate-

[12] Steve Holden & Walt Scott, Fannie Mae, *Desktop Underwriter Version 10.1 – updates to the debt-to-income (DTI) ratio assessment*, July 10, 2017.

documentation lending activity – could conceivably be achieved with fewer regulatory restrictions, which would expand access to credit for more borrowers. A wholesale overhaul of the regulation is likely difficult to envision now that the industry has become familiar with the existing rules and is comfortable with the GSE QM Patch, but HPC proposes that the CFPB take into consideration the relative costs and benefits of elimination of various components of the QM definition, as an alternative to Option I.

At its core, this proposed alternative would reassert the fundamental statutory requirements as the fundamental definition for QM, for which a loan would receive safe harbor status. All other criteria would be removed or modified, as described below, and loans with terms or conditions that were outside of these criteria would be subject to a rebuttable presumption of compliance.

HPC proposes that the Bureau consider and, perhaps, engage with the industry in a policy dialogue on the following regulatory changes:

a) Establish the core statutory requirements *alone* to define QM for safe harbor status: i) no negative amortization, interest-only, or balloon payments; ii) no mortgage terms longer than 30 years; iii) a points and fees cap of 3 percent of the total loan amount; iv) verification of income, employment, assets, and obligations; v) compliance with any total debt-to-income ratio, **only** if *the Bureau were to set such a criteria*; and vi) borrower qualification based on the payment associated with maximum rate to be charged (over the full amortization period).[13]
b) Eliminate regulatory requirement of 43 percent DTI, as explicitly permitted by law;
c) Redefine points and fees cap (set at 3 percent of the original loan balance) to address discrepancies that exist with current approach. The revised 3 percent points and fees cap should: i) be raised for small dollar loans, from $102,894 to $200,000, with a sliding scale to raise the cap for smaller loans; ii) permit fees paid to either affiliated or non-affiliated companies; and iii) explicitly exclude mortgage insurance premiums.
d) Raise regulatory pricing cap from 150 basis points to 250 basis points over APOR, to accommodate lending to credit-worthy consumers who cannot be reached today with the strict limit. This cap is well below the subprime rates that were targeted by the QM statute.
e) Define the documentation and verification mandate to require lenders to demonstrate that any borrower financial information (income, employment, assets, debt obligations) used in the lending decision be verified and validated

[13] 15 U.S.C. § 1639c(b)(2), Pub. L. No. 111-203,§ 1412.

from bona fide sources, in accordance with the statutory[14] and regulatory language.[15]

f) Remove Appendix Q and the QM Patch.

We believe that this option addresses the three major market problems originally addressed by the ATR/QM statute, by articulating a set of clear and explicitly delineated consumer and ability-to-repay protections, to be embedded in the revised QM safe harbor definition. Specifically, this option combines: 1) the "pure" QM statutory features, as required by the law, 2) a new, but reasonable, pricing cap, 3) clear prohibitions on fraudulent practices for verifying borrower financial information, and 4) tighter prohibitions against collateral-based lending practices and/or equity stripping practices.

The cumulative effect of these protections would make it very difficult, if not impossible, for an unscrupulous mortgage lender/investor to establish overly lenient (or irresponsible) underwriting criteria and still be able to execute a viable/profitable business model. For example, a lender *could* approve a 580 FICO score, 60% DTI, and a 99% LTV to be eligible for QM, but only if they did so within the rate cap of 250 basis points over APOR, which is inadequate to cover the risk associated with this loan. At that price, the lender could not maintain a profitable yield on the loan and/or attract investor capital and liquidity. Of course, such a loan could be offered above the 250 bps over APOR threshold, but the consumer then has the right and option to rebut the lender's presumption of compliance in court. Accordingly, as a reasonable trade-off, HPC could envision some expansion to the existing guidance for QM rebuttable presumption of compliance, to broaden consumers' right to raise a claim in court for these loans.

It is important to note, the example is illustrative of a borrower with an extremely "weak" credit profile, with layered risks. In contrast, there are many more real-life examples of borrowers with credit profiles on the margins, rather than the extremes of this example, who could be well-served by lenders who could price to a 250 bps over APOR threshold. Lenders who tried to price excessive risk under the 250 bps threshold, to achieve safe harbor status, would do so at their own risk of loss.

In other words, the cost to either party is outweighed by the benefits. Consumers benefit from credit access expansion and lenders from a clarity, simplicity, and flexibility. Such a balanced approach, which captures and embraces the financial interests of both parties, would be a welcome change, especially in the current market environment, which suffers from persistent barriers to availability of mortgage credit.

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[14] 15 U.S.C. § 1639c(a)(4)
[15] 12 C.F.R. § 1026.43(c)(4)

<u>Conclusion</u>

HPC members appreciate the opportunity to respond to the Bureau's RFI. We believe that the full set of Dodd-Frank statutory objectives must be included in the Bureau's assessment of the QM / ATR regulation. We recommend this broader view, to ensure that Bureau has an all-encompassing viewpoint, from which to observe and understand the impacts of the QM regulation not only on individual consumers, but also on the broader consumer marketplace and the lenders who operate within that marketplace.

Our additional thoughts for consideration and two alternative regulatory proposals are intended to provide the CFPB with a fresh perspective on the law and regulations, from which to frame the assessment methodology and the ultimate regulatory review. As mentioned previously, HPC members are continuing to develop and assess the alternatives outlined here. If you have any questions or would like to discuss our comments, please contact Meg Burns, Senior Vice President for Mortgage Policy at 202-589-1926.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council
Financial Services Roundtable

Addendum A

Appendix Q Out-of-Date and Impractical Documentation / Verification Requirements

1) For Social Security retirement income, lenders should only need an awards statement OR proof of receipt, from a direct deposit or checking account statement. For the nontaxable portion, lenders should be expected to gross up the standard 125% instead of at the household tax rate, as this would be easier and create a consistent application, without any impact on underwriting. For other types of Social Security, required documentation should be an awards letter and proof or receipt.

2) Signed tax returns should not be required. Most mortgage customers file their taxes electronically and sign their tax returns electronically by using secure PINs, as permitted by the IRS. A signed documentation requirement is outdated by today's standards and is an unnecessary burden for all customers.

3) Rental income verification using a current lease should be an alternative form of documentation, rather than required. The borrower's two-year tax history will reflect this form of income adequately and should be the primary vehicle for validation purposes. The lease requirement is particularly burdensome for customers with numerous rental units.

4) The requirement for special additional documentation for military personnel, such as Basic Allowance for Housing and Basic Allowance for Subsistence, as written proof of continuity in this form of income. This mandate puts unnecessary and disparate burdens on military applicants (which are obviously not applicable for civilian wage earners) and such documentation is almost impossible to obtain.

5) Part-time income requirements are unnecessarily challenging. While the regulation acknowledges that many low and moderate income families rely on part-time and seasonal income, the two-year history prevents some prospective borrowers from qualifying for a loan. To fully document two years of this type of income requires more than two years of employment. Further, the guidance does not clearly and explicitly state that this form of income is acceptable from multiple part-time or seasonal jobs, as opposed to consistent employment with the same employer. This guidance needs to be updated and reworked for clarity.

6) The requirement for a Profits & Losses (P&L) statement and balance sheet for sole proprietors and partnerships should be eliminated. It's a burden for borrowers and lenders and there is no benefit, as this information does not help

to determine income. The tax returns are a better source of accurate and up-to-date information regarding the customer's financial situation. When asked to produce a P&L, some customers prepare their own documents in a manner that does not feel adequately substantiated and/or accurate, relative to the historic information on the tax returns. For these reasons, two years of taxes should be sufficient for the documentation for the self-employed and this would relieve burdens on lenders and borrowers.

7) Clarification is needed on the definition of a "family owned business." Does this include cousins, uncles, other extended family? Lending to small businesses would be more efficient for borrowers or lenders if this was clarified.

8) CFPB should consider replacing the requirement to verbally verify employment (VVOE) when there are other means to validate this information, in conjunction with a current pay stub. The VVOE places a significant burden on borrowers when employers will not provide verbal verification; further, many employees do not want their employers to know if they are getting a loan, particularly when employed by smaller companies or organizations. Many times lenders rely on The Work Number, a resource that is no different from a current pay stub and is updated each pay period.

9) Extended leaves of absence should not require documentation for a job that was held more than one year prior to the submission of the loan application (or some other reasonable, short time frame). Any customer who is out of work for an extended period of time will have difficulty obtaining old W-2 or other types of documentation and frankly, this information is not relevant. For example, if a customer takes off 10 years to raise children or care for an aging parent, the information on a W-2 from a job that long ago is useless and there is no need to impose that burden on the borrower. In this situation, an explanation from the borrower should be sufficient.

10) Projected income from a new job requires a non-revocable contract for employment, which is not the norm for most companies. Therefore, lenders can obtain a copy of a contract, but the terms are never non-revocable. Employment is generally on at "at will" basis and the CFPB requirement is unlikely to influence an employer's policy and practice. This requirement needs to be eliminated as this is a needless obstacle for borrowers with new jobs.