THE
NATIONAL LAW REVIEW

CFPB Assesses Ability to Repay/Qualified Mortgage Rule

Wednesday, January 16, 2019

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Consumer Finance Monitor

Financial Institutions & Banking
Real Estate
All Federal

On January 10, the CFPB published a report containing the results of its assessment of the Ability-to-Repay and Qualified Mortgage Rule ("ATR/QM Rule") issued in 2013. The assessment was conducted pursuant to the Dodd-Frank Act, which requires the Bureau to review each significant rule it issues and evaluate whether the rule is effective in achieving its intended objectives, and the purposes and objectives of Title X of the Dodd-Frank Act, or whether it is having unintended consequences. The Bureau based the report on information gathered from a variety of sources, including:

1. Loan origination and performance data from the National Mortgage Database (NMDB), Black Knight, CoreLogic, and HMDA
2. Desktop Underwriter and Loan Prospector submissions and acquisitions data provided by Fannie Mae and Freddie Mac
3. Application-level data from nine lenders covering over 9 million applicants
4. Survey results from 190 lenders
5. Supervision Data
6. Residential mortgage backed securities (RMBS) data from IMF, Bloomberg, L.P., and SEC
7. Cost data from the Mortgage Bankers Association's (MBA) Annual Mortgage Bankers Performance Reports between 2009 and 2018
8. Conference of State Bank Supervisors' (CSBS) 2015 Public Survey data
9. Evidence from comments received in response to the 2017 RFI concerning the ATR/QM assessmentThe ATR/QM Rule, which came into effect in January 2014, prohibits a lender from making a closed-end residential mortgage loan unless before closing the lender makes a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay (ATR). Qualified Mortgage (QM) loans are presumed to comply with the ATR requirement, except in the case of "higher priced" mortgage loans, where this presumption is rebuttable. Based on its survey of lenders, the Bureau found that a majority of respondents changed their business model due to the ATR/QM Rule in the form of increased income documentation, increased staffing, or adopting of a policy of not originating non-QM loans. The Bureau concluded that among the nine lenders that provided data, the changes resulted in lost profits of between $20 and 26 million per year. The Bureau also found that over the period of 2014 to 2016 the ATR/QM Rule eliminated between 63-70% of non-GSE eligible home purchase loans with debt-to-income (DTI) ratios above 43%. This impact did not carry over to refinance transactions, where lenders are more likely to extend credit due to a demonstrated ability to repay. The Bureau admits that because credit standards were already tight when the ATR/QM Rule took effect, "it is possible that the impacts would be different during times when credit is more abundant."We note that the mortgage industry did not believe that a robust non-QM market would develop and that the temporary GSE QM would be relied on heavily by lenders. And this is no surprise. The potential liability for violating the rule is significant, and based on the general standards for a non-QM loan there is no way for a lender, a due

diligence firm or other party to conclusively determine if a given non-QM loan complies with the rule. As a result, a robust QM market did not develop, and it will never develop based on the current statute and rule. Based on the presumption of compliance with the rule, which is conclusive for non-higher priced loans, mortgage lenders mainly will originate a QM loan when possible. And based on the familiarity of the industry with Fannie Mae and Freddie Mac underwriting requirements, and the relative inflexibility of the standard QM based on the strict 43% DTI ratio limit and Appendix Q, the temporary GSE QM is favored by the industry. While the Bureau noted that the temporary GSE QM will expire no later than January 10, 2021, it did not address the fact that should the QM expire, mortgage lending would be severely constrained. Congress and/or the Bureau must act to prevent another mortgage crisis.The Bureau further concludes that the ATR/QM Rule does not appear to be constraining the activities of smaller lenders, who may originate QM loans that have DTI ratios above 43% without following Appendix Q, and may also originate QM loans that have balloon payments if various conditions are met, as long as such loans are held in portfolio for at least two years after the origination. In March 2016, the definition of a small creditor was amended to increase the loan threshold from 500 to 2,000 loans per year. According to the Bureau, this amendment had ameliorative effects – (1) the geographic market coverage of small creditors increased substantially with the new threshold, increasing access to credit for borrowers in rural and underserved areas who have DTIs above 43%; and (2) the share of loans made by depository institutions that were small creditors almost doubled.

10. We note that in May 2018, [Senate Bill 2155](), the Economic Growth, Regulatory Relief, and Consumer Protection Act, was signed into law, creating a new QM category for insured depository institutions and insured credit unions that have, together with their affiliates, less than $10 billion in total consolidated assets. The Act provides that the new QM loan is deemed to comply with the ATR requirements if the loan: (1) is originated by and retained by the institution, (2) complies with requirements regarding prepayment penalties and points and fees, and (3) does not have negative amortization or interest-only terms. Furthermore, the institution must consider and verify the debt, income, and financial resources of the consumer. Beyond a minor footnote, the Bureau does not address this amendment in its report, likely because it still needs to implement the law.
11. The Bureau also notes that innovation is occurring in the Temporary GSE QM space in the area of income verification and calculation, because compliance with Appendix Q is not required (loans made under the standard QM that is based on the strict 43% DTI ratio limit must follow Appendix Q). While the innovation is positive, it does not address the underlying need to continue, or find a suitable alternative, for the Temporary GSE QM.
12. Although the rule includes a standard QM that is based on a strict DTI ratio limit of 43%, the Bureau created a temporary QM for loans eligible for sale to Fannie Mae or Freddie Mac "to preserve access to credit for consumers with debt-to-income ratios above 43 percent during a transition period in which the market was fragile and the mortgage industry was adjusting to the final rule." The Bureau notes that it "expected that there would be a robust and sizable market for non-QM loans beyond the 43 percent threshold and structured the Rule to try to ensure that this market would develop."
13. In its assessment, the Bureau found that the introduction of the ATR/QM Rule was generally not correlated with an improvement in loan performance (as measured by the percentage of loans becoming 60 or more days delinquent within two years of origination). Rather, the Bureau concludes that delinquency rates on mortgages originated in the years immediately prior to the effective date of the ATR/QM Rule were historically low, "as credit was already tight at that time." Moreover, although the performance of non-QM loans did not improve in absolute terms under the ATR/QM Rule, it has improved relative to the performance of comparable QM loans.
14. The CFPB states that the report does not include a cost-benefit analysis of the ATR/QM Rule or its provisions, but that "each report does address matters relating to the costs and benefits." The CFPB indicated that going forward, it will reconsider whether to include such an analysis in its assessment.

The Bureau did not announce any further action relative to the ATR/QM Rule but did indicate that reactions from stakeholders to the reports' findings and conclusions would help inform future policy decisions. The Bureau concurrently released a report assessing the RESPA Mortgage Servicing Rule, which we will analyze separately.