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CFPB Comment Letter re ATR/QM Assessment

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

Re: Docket No. CFPB–2017–0014:
Request for Information Regarding ATR/QM Rule Assessment

Dear Ms. Jackson:

The Consumer Financial Protection Bureau issued a Request for Information Regarding Ability-to-Repay/Qualified Mortgage Rule Assessment. You have invited comments “on the feasibility and effectiveness of the assessment plan, the objectives of the ATR/QM Rule that the Bureau intends to emphasize in the assessment . . .” (82 F.R. 25250) You anticipate that the assessment will primarily focus on the ATR/QM Rule’s requirements in achieving the goal of preserving consumer access to responsible, affordable credit. The Bureau stated with the January 2013 Rule its belief that the ATR/QM Rule “will not lead to a significant reduction in consumers’ access to consumer financial products and services, namely mortgage credit.” (82 F.R. 25249)

In particular, the Bureau invites comments “on the feasibility and effectiveness of the assessment plan, the objectives of the ATR/QM Rule that the Bureau intends to emphasize in the assessment . . .” (82 F.R. 25250)

I believe that the assessment’s primary “focus on the ATR/QM Rule’s requirements in achieving the goal of preserving consumer access to responsible, affordable credit” is a good one. I suggest that the Bureau develop a set of metrics to evaluate whether mortgage regulations increase access to sustainable credit.
While the ATR/QM Rule has been successful overall, housing policy analysts have found that the credit box is tighter than it need be. For instance, Laurie Goodman of the Urban Institute’s Housing Finance Policy Center has noted that mortgage credit has become very tight in the aftermath of the financial crisis. While experts generally agree that it is poor public policy to make loans to borrowers who cannot make their payments, failing to make mortgages to those who can make their payments has an opportunity cost, because historically homeownership has been the best way to build wealth. And, default is not binary: very few borrowers will default under all circumstances, and very few borrowers will never default. The decision where to draw the line—which mortgages to make—comes down to what probability of default we as a society are prepared to tolerate.

Goodman has been making the case for some time that the credit box is too tight. A tight credit box raises a number of important questions about how credit could be loosened responsibly. What, for instance, could the Consumer Financial Protection Bureau do to encourage more lending? Should it be offering more of a safe harbor for lenders who are willing to make non-Qualified Mortgage loans? The private-label mortgage-backed securities sector has remained close to dead since the financial crisis. Are there ways to bring some life—responsible life—back to that sector? Why aren’t portfolio lenders stepping into that space? What would they need to do so?

When the Qualified Mortgage rule was being hashed out, there was a debate as to whether there should be any non-Qualified Mortgages available to borrowers. Some argued that every borrower should get a Qualified Mortgage, which has so many consumer protection provisions built into it. I was of the opinion that there should be a market for non-QM although the CFPB would need to monitor that sector closely. I stand by that position. The credit box is too tight and non-QM could help to loosen it up.

While it is important to make residential credit broadly available, the agencies will be doing borrowers no favors if their loans are not sustainable and they end up in default or foreclosure. The agencies should come up with a metric that balances responsible underwriting with access to credit and apply that metric to the definition of a QRM.

Quercia et al. have developed one such metric, which they refer to as a “benefit ratio.” The benefit ratio compares “the percent reduction in the number of defaults to the percent reduction in the number of borrowers who would have access to QRM mortgages.” Balancing Risk and Access: Underwriting Standards and Qualified Residential Mortgages at 20 (January 2012). A metric of this sort would go a long way to ensuring that there is transparency for homeowners as to the likelihood that they can not only get a mortgage but also pay it off and keep their homes.
The Bureau should design the ATR/QM assessment to support the “goal of preserving consumer access to responsible, affordable credit” by developing and testing a set of metrics that help to measure the impact of regulations on the availability of sustainable credit.*

Sincerely,

David Reiss

* This letter is drawn from the author’s posts to www.REFinBlog.com, which covers developments in the law and practice of real estate finance.