Consumer Mortgage Coalition

March 20, 2014

Federal Housing Finance Agency
Office of Policy Analysis and Research
Constitution Center
400 Seventh Street S.W., Ninth Floor
Washington, D.C. 20024
loanpurchaselimitinput@fhfa.gov

Re: Request for Public Input on Implementation Issues
No. 2013-N-18
Loan Limits

Dear Sir or Madam:

The Consumer Mortgage Coalition ("CMC"), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments on the Federal Housing Finance Agency's ("FHFA") request for public input on implementation issues concerning potential amendments to the loan purchase limits.

Housing finance policy is in the process of undergoing significant changes in many areas. Fannie Mae and Freddie Mac (the "GSEs") have been in conservatorship for over five years, during which time FHFA has introduced a number of improvements to their operations, and this process is continuing.

In addition, Congress is actively considering broad redesign of the GSEs and of the secondary mortgage market. Congressional enactment of reform may not be immediate, but there is bipartisan, active support in Congress today for comprehensive GSE reform.

It is Premature to Revise the Loan Limits

The GSEs' loan limits in the past were a tool to expand or contract the GSEs' market presence. Today, however, because of the new ability-to-repay regulation, the loan limits do more than that – they significantly determine the availability of housing credit.

The mortgage industry is now implementing the new ability-to-repay regulation[1] promulgated under the Dodd-Frank Wall Street Reform and Consumer Protection Act. This regulation became effective on January 10, 2014, and in many areas lenders are uncertain how courts will construe the regulation. Noncompliance with the ability-to-repay regulation introduces significant litigation risk, sufficient to make any noncompliant loan disproportionately unprofitable. One method of demonstrating compliance with the ability-to-repay regulation is to limit lending to GSE-eligible loans, meaning loans under the GSE loan limit.[2] To a large extent, therefore, the ability-to-repay regulation will constrain many or most consumer mortgage lenders to originating only qualified mortgage ("QM") loans, and especially GSE loans and Federal Housing Administration ("FHA") loans. In other words, the ability-to-repay regulation will have the effect of significantly reducing the availability of jumbo loans and loans not eligible for backing by the GSEs or FHA.

Were FHFA to reduce the loan limit, the ramifications of that reduction would therefore reach farther than issues relating to the appropriate level of GSE presence in the mortgage market. It would also have significant affects on the availability of housing finance for many families.

If the final risk retention regulation defines a qualified residential mortgage ("QRM") loan the same way as a QM loan, this would increase the cost of non-QM loans, and further confine lending to QM loans.

Historical data about the impact of the loan limits will not reflect the impact of the new ability-to-repay regulation or of the risk retention regulation, yet the impact of these untested regulations could be significant.

For these reasons, we caution against reducing the loan limits at this time. After we learn how Congress will reform the GSEs; after the marketplace has seen how courts will construe the extent of liability under the ability-to-repay regulation; and after lenders react to the untested litigation risk, then revisiting the GSEs' loan limits may be more appropriate.

The Mortgage Markets Need Clarifications from FHFA and the GSEs

The untested ability-to-repay regulation presents FHFA with a unique opportunity to work with the GSEs to provide needed marketplace certainty. Of particular concern under the new regulation is the lack of a residual income test for rebuttable presumption QM loans. Lenders can be liable upon a showing that:

[1] 12 C.F.R. § 1026.43.
[2] 78 Fed. Reg. 44686, 44699 n. 50 (July 24, 2013).

> "the consumer's income, debt obligations, alimony, child support, and the consumer's monthly payment (including mortgage-related obligations) on the covered transaction and on any simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware . . . ."[3]

The regulation contains neither a definition of residual income nor an indication about how much residual income is sufficient or insufficient. In other words, lenders who make rebuttable presumption QM loans are held to a standard that is wholly undefined. This is causing many creditors to restrict their lending largely to safe harbor QM loans, for which many creditworthy borrowers do not qualify.

The CFPB has explained that it did not adopt the Veterans Administration's residual income standard because it has not had time to study possible improvements in that standard:

> "The VA underwrites its loans to veterans based on a residual income table developed in 1997. The Bureau understands that the table shows the residual income desired for the consumer based on the loan amount, region of the country, and family size, but does not account for differences in housing or living costs within regions (for instance rural Vermont versus New York City). The Bureau also understands that the residual income is calculated by deducting obligations, including Federal and State taxes, from effective income. However, at this time, the Bureau is unable to conduct a detailed review of the VA residual income guidelines, which would include an analysis of whether those guidelines are predictive of repayment ability, to determine if those standards should be incorporated, in whole or in part, into the ability-to- repay analysis that applies to the entire residential mortgage market."[4]

The regulation does not set specific underwriting standards in many areas. For non-QM loans, creditors must consider the consumer's debt-to-income ratio or residual income,[5] but the regulation sets no standard for either. The regulation's commentary explains:

> "A creditor may, but is not required to, look to guidance issued by entities such as the Federal Housing Administration, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or Fannie Mae or Freddie Mac while

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[3] 12 C.F.R. § 1026.43(e)(1)(ii)(B).
[4] 78 Fed. Reg. 6408, 6486-87 (January 30, 2013) (final ability-to-repay regulation).
[5] 12 C.F.R. § 1026.43(c)(2)(vii).

> operating under the conservatorship of the Federal Housing Finance Agency."[6]

This is precisely what many creditors wish to do. Given the GSEs' extensive research resources, we urge FHFA and the GSEs to establish a residual income standard, at least for rebuttable presumption QM loans, that creditors may use to demonstrate a reasonable and good faith determination of ability to repay. A residual income standard would greatly ease the current restrictive credit standards nationwide.

The lack of a residual income standard is one, but certainly not the only, area where additional clarity is needed under the CFPB's new regulations. The Dodd-Frank Act simply did not provide the CFPB with the time it takes to create a new agency, retain and train staff, and issue a number of far-reaching mortgage regulations, covering loan origination as well as loan servicing. The CMC has requested guidance from the CFPB with respect to both origination issues and servicing issues, and updates these requests, but the CFPB has indicated it will not be in a position to respond formally in a comprehensive manner.

The GSEs have extensive historical knowledge about mortgage loans, their underwriting and performance, and their servicing. They are well positioned to provide the needed clarity based on their expertise. We strongly encourage FHFA and the GSEs to establish clarity to help ensure the availability of housing finance, as well as to minimize marketplace disruptions caused by the transition to the extensive new regulations. Providing this clarity would both support the GSEs' housing mission and the conservator's duty to preserve and conserve the GSEs' assets.

Sincerely,

Anne C. Canfield
Executive Director

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[6] Comment 43(c)(2)-1.