The QRM Definition in the Final Risk Retention Rule Should be Aligned to with the QM Definition in the Ability to Repay Rule

MBA RECOMMENDS

Federal agencies charged with developing the risk-retention rule should align the Qualified Residential Mortgage exemption (QRM) with the Qualified Mortgage designation established in the Ability to Repay rule (QM).

ISSUE

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires the federal banking agencies and other regulators to develop rules requiring issuers to retain a portion of the credit risk of assets they securitize. The law specifies a five percent risk retention baseline, but regulators can set different amounts for different assets. An exemption is provided for “Qualified Residential Mortgages” (QRM) which regulators must establish using criteria that demonstrate a lower risk of default. Under Dodd-Frank, the QRM exemption may be “no broader than” the QM designation contained in the ability to repay rule.

MBA believes that the requirements established by the Consumer Financial Protection Bureau (CFPB) to satisfy the QM designation have eliminated many of the loan-level factors that contributed to the mortgage crisis. Indeed, seasoned loans underwritten to standards similar to QM have performed far better than even traditional prime loans, even during the recent financial crisis.

Drafting the QRM exemption more narrowly than QM will further tighten credit for loans nationwide, and eliminate any opportunity for private capital to compete with federally subsidized, taxpayer-supported loan programs.

BACKGROUND

Risk retention is intended to protect asset-backed securities investors from unsustainable lending practices. Any risk retention framework should be implemented carefully to avoid unnecessarily restricting consumers’ access to credit, and should take into account other regulations so as not to be overly burdensome.

Importantly, all residential loans, whether securitized, sold or held in portfolio, will need to meet the “ability to repay” standard (QM) test required by Dodd-Frank, independently of any risk-retention and QRM requirements. The QM standards address the very same risks that gave rise to the QRM rule. The result is that loans that meet the QM standards will also be safe for investors, with standards that are fully transparent.

For more information, visit mba.org or call (202) 557-2700.
Aligning QM and QRM, so that the QRM exemption is equal to the QM designation, will protect investors and safeguard consumers through safe, sustainable lending standards, while allowing for private capital to return to the market. Failing to align these rules will further entrench the market’s dependence on federal guarantee programs due to a provision that exempts from the risk-retention requirement loans eligible for these programs.

Unfortunately, the proposed rule implementing the risk retention and QRM provisions, released in 2011, goes beyond what Congress intended by including overly restrictive down payment and debt-to-income requirements which would drastically limit affordable mortgage financing options for moderate-income families, first-time borrowers, minorities and many others. The proposed Premium Capture Cash Reserve Account (PCCRA) also is not a statutory requirement, and contains features that are incompatible with the existing structure of secondary market transactions.

Securitization is a valuable liquidity channel for providing borrowers with affordable mortgage credit on terms that are disclosed early in the process. Portfolio lending does not have the capacity to meet market demands, and the future of the government sponsored enterprises is uncertain. Without a viable private label securitization process, the nation’s housing finance needs cannot be met.

**ACTION NEEDED**

Congress should urge the federal agencies to align the QRM exemption with the QM designation developed by the CFPB. Congress should also urge the agencies to remove the down payment requirement from the proposed QRM exemption, revise the DTI requirements to be consistent with the QM rule. Congress should also instruct the regulators to eliminate the PCCRA and ensure that it not be part of any final rule.