
To: Senator Elizabeth Warren Teams
From: Professor Brittany Almquist Lewis
Date: April 8, 2026
Re: Addressing Systemic Risks and Consumer Protections in the [March 13 Executive Order](#)

This memo discusses key systemic risks and consumer protection issues present in the March 13, 2026 Mortgage Reform Executive Order, highlighting reforms to Ability-to-Repay rules, increased creditor protections, and reduced regulatory oversight (Sections 2.a.ii, 2.a.iv, 2.b.ii, 4.a.i, 4.a.v, 8.a.ii, 9.a.i).

Sec. 2. Origination and Ability-to-Repay (ATR)/Qualified Mortgage (QM) Reform. (a) The Consumer Financial Protection Bureau (CFPB) shall consider, as appropriate and consistent with applicable law:

- (i) proposing amendments to Regulation Z that tailor the following requirements for smaller banks: ATR and QM requirements (including potentially a broader QM safe harbor for portfolio loans) and the requirements of the Truth in Lending Act, Public Law 90-321 (TILA), Real Estate Settlement Procedure Act, Public Law 93-533 (RESPA), and TILA-RESPA Integrated Disclosure (TRID) rules;*
- (iv) updating regulations regarding banks' reasonable compliance with ATR and QM underwriting requirements by removing unnecessarily burdensome elements;*

Ability-to-Repay and QM Requirements: Item (i) refers to Qualified Mortgage (QM) loans held on portfolio by smaller banks, a designation that loosens the standard QM requirements. QM loans held on portfolio have variations that would make them Non-QM if sold into securitization – such as a balloon payment, a debt-to-income ratio above 43%, or alternative documentation. Item (i) proposes to increase safe harbor provisions on these mortgages. Item (iv) proposes updating the Ability-to-Repay (ATR) and QM requirements by removing certain guardrails. Below I discuss potential dangers of these reforms, highlighted by my research.

First, loosening Ability-to-Repay criteria risks making mortgage loans very fragile. In Lewis (2023, 2021), I show that alternative mortgages (including balloon, high debt-to-income ratio, and low documentation structures, now allowed in portfolio-QM) default at significantly higher rates. If the Executive Order's changes render ATR a subjective lender determination rather than comprehensive criteria, my research indicates ensuing detrimental consequences for both borrowers and investors. For example, prior to the Global Financial Crisis (GFC), the absence of comprehensive ATR requirements allowed lenders to underwrite adjustable-rate mortgages

(ARMs) based solely on a borrower's ability to cover initial payments, rather than loan payments after the recast date. This fostered innovation in products with artificially low introductory mortgage payments featuring teaser rates and alternative amortization schedules – future loading large balloon payments. Borrowers with insufficient verification of Ability-to-Repay are more likely to struggle once payments rise, especially in the event of macroeconomic downturns.

Additionally, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 limited the amount of insurance that bankruptcy protection allows borrowers. Pre-BAPCPA, borrowers with income slightly above the means test could utilize Chapter 7 bankruptcy to discharge unsecured debt to funnel money toward their mortgage in high homestead exemption states (Morgan et al. 2012). Following BAPCPA, this path became significantly more difficult, offering less insurance to borrowers with complex and potentially predatory mortgages in macroeconomic downturns, likely also at the expense of investors.

Similar to the alternative mortgages analyzed in Lewis (2023, 2021), portfolio-QM or Non-QM mortgage products can feature adjustable rates which have the potential to recast to a much higher rate later in the loan's life. Prior to the GFC, these resets at times exceeded 130% of the original mortgage payment. Lewis (2021) shows that large payment resets create expense shocks that increase default rates, foreclosures, and bankruptcies. I find evidence that minority dominant ZIP codes are the most at risk of receiving complex alternative mortgage products, causing higher default, foreclosure, and bankruptcy rates, as well as the largest ensuing increase in unemployment in these areas. The Ability-to-Repay rules are intended to safeguard against mortgage payment shocks and relaxing ATR rules risks increasing default rates. If the Executive Order accelerates portfolio-QM or Non-QM originations, my work suggests this could lead to correlated payment reset dates, aggregating risk for the holding institutions and facilitating a buildup of systemic risk.

The Department of Justice (DOJ) “False Claims Act” brought unprecedented corrective actions for financial intermediaries’ failure to accurately assess borrowers’ assets and income – key factors in Ability-to-Repay – leading up to the Global Financial Crisis. These failures resulted in widespread borrower and investor harm. The promotion of portfolio-QM or Non-QM products that bypass traditional ATR verification threatens to replicate the conditions of the GFC. By relaxing ATR standards, we increase the risk of complex mortgages that fail to account for the borrower's Ability-to-Repay at the fully indexed rate, exposing both borrowers and the broader financial system to severe payment shocks (Lewis (2021)).

Safe Harbor: Expanding safe harbor is a legal provision that creates a “legal safe zone” in which lenders are assumed to have complied with ATR rules if they meet certain criteria. This increases the creditor protection of mortgage originators. Lewis (2021, 2023) demonstrates that strengthening creditor protections drives a short-term surge in credit supply and the proliferation of complex mortgage products, especially among vulnerable borrowers. Increased safe harbor will likely incentivize more complex mortgage terms that may be most prominent among more

vulnerable borrowers. Additionally, while the mortgages specified in the Order are portfolio held rather than sold into securitization, portfolio loans are still able to be sold as bulk loan transfers. Increasing safe harbor among complex loans could increase mispricing in bulk loan transfers where innovative features are not accurately priced into market prices. Legally expanding safe harbor for portfolio-QM or Non-QM mortgages may implicitly endorse alternative mortgage characteristics, creating precedent or general equilibrium spillover effects that affect the value of Non-QM mortgages sold into secondary markets. This would allow credit provision to flow too freely in the short-term and precipitate a build-up of risk held both on and off bank balance sheets, leading to a more severe longer-term market correction.

(b) The Vice Chairman for Supervision of the Board of Governors of the Federal Reserve System (Federal Reserve), the Director of the CFPB, the Chairman of the National Credit Union Administration (NCUA) Board, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (FDIC), and the Comptroller of the Currency shall consider, as appropriate and consistent with applicable law, revising supervisory guidance to ensure that:

(ii) good-faith, technical compliance errors are subject to correction-first supervisory treatment, with enforcement reserved for borrower harm or repeated misconduct.

Supervisory Treatment: Revising supervisory treatment to a 'correction-first' model—where enforcement actions are reserved only for documented borrower harm or recidivism—effectively shifts the burden of proof onto the most vulnerable parties. This shift represents a material reduction in oversight and a significant expansion of creditor protections for originators. My research demonstrates that such heightened creditor protections catalyze innovation in high-risk mortgage products, which increases the prevalence of predatory lending (Lewis (2021)) and, paradoxically, necessitates even more rigorous supervision to prevent systemic failure (Lewis (2023)).

Sec. 4. Capital and Liquidity Alignment. *(a) The Vice Chairman for Supervision of the Federal Reserve, the Chairman of the NCUA Board, the Chairperson of the Board of Directors of the FDIC, the Comptroller of the Currency, and the Director of the Federal Housing Finance Agency (FHFA) shall consider, as appropriate and consistent with applicable law:*

(i) revising capital regulations, consistent with appropriate risk-management requirements, to tailor risk weights for all banks, including community banks and other smaller banks, for portfolio mortgages, servicing rights, and warehouse lines of credit to the material credit risk of the exposure;

Warehouse Lines of Credit: Warehouse lines of credit for non-QM mortgages can embed large risks and the risk weights should be commensurate with these risks. Lewis (2023, 2021) establish that warehouse lines of credit backed by private-label mortgages or the “expanded-credit market” are vulnerable to runs and fire sales. The majority of these warehouse lines take place in the “sale and repurchase” or repo market, which are short-term funding markets. The Bankruptcy Abuse Prevention and Protection Act (BAPCPA) of 2005 granted mortgage collateral backing repo warehouse credit lines super-senior bankruptcy status, which allows lenders to sell the collateral if a counterparty fails to deliver. Because private-label or non-QM mortgages are not insured by the US government, the securities they back can experience rapid price declines. The combination of using the repo market to fund these warehouse lines of credit, super-senior bankruptcy status granted by BAPCPA, and non-QM mortgages makes these warehouse lines of credit risk laden.

Servicing Rights: Hamdi et al. (2023) demonstrate that increased risk weights on mortgage servicing rights (MSRs) catalyzed a mass transfer of these rights to nonbank entities. We document that nonbank-third-party servicers foreclose on borrowers at a higher rate than bank-third-party servicers. This evidence suggests that reducing banks’ regulatory cost of carrying mortgage servicing rights may increase their retention of servicing rights. However, we also find that portfolio loans – originated, serviced, and held by the same bank – foreclose at the highest rate. Additionally, Lewis and Padi (2025) document substantial frictions in the servicing market, suggesting that even small changes could result in large distortions of servicer incentives to provide liquidity or foreclose on borrowers. Any changes in servicing oversight or origination practices that lead to an even slightly higher foreclosure rate are likely to have reverberating effects, since foreclosures cause contagion and aggregate up to community-wide shocks, especially during affordability crises or credit crunches.

(v) *accelerating collateral boarding and valuation processes through standardized data and digital documentation;*

Portfolio-QM or Non-QM require more time and resources to value, since they feature alternative characteristics and require nuanced projections of risk under different income or expense shocks and interest rate paths (Lewis (2021)). Therefore, accelerating collateral boarding and valuation processes on portfolio-QM or Non-QM mortgages risks increasing valuation errors. Combined with the Order’s explicit retreat of regulatory oversight, asset mispricing can drive a buildup of risk in mortgage securities, bulk loan sales, or asset valuation and increase financial fragility, the probability of asset fire-sales, and market destabilization (Lewis (2023)).

Sec. 8. Servicing and Supervisory Certainty. (a) The Secretary of HUD, the Vice Chairman for Supervision of the Federal Reserve, the Director of the CFPB, the Chairman of the NCUA Board, the Chairperson of the Board of Directors of the FDIC, and the Comptroller of the Currency shall consider, as appropriate and consistent with applicable law:

- (ii) ensuring that supervisory evaluations of performing, prudently underwritten portfolio loans do not focus on technical defects or rely on evolving supervisory interpretations.*

This policy shift signals to examiners that the sound underwriting of portfolio-QM mortgages is no longer a supervisory priority. When paired with the Executive Order's implicit promotion of portfolio-QM or Non-QM originations and the dilution of Ability-to-Repay (ATR) guardrails, this reduction in oversight sets the stage for institutionalizing excessive leverage and systemic instability across the mortgage market.

Sec. 9. Enforcement. (a) The Vice Chairman for Supervision of the Federal Reserve, the Director of the CFPB, the Chairman of the NCUA Board, the Chairperson of the Board of Directors of the FDIC, and the Comptroller of the Currency shall consider, as appropriate and consistent with applicable law, promulgating a policy against enforcement actions for violations of consumer financial laws that:

- (i) discourages imposing civil monetary penalties, except where the underlying violations are willful, knowing, or reckless*

The proposed rule appears intended to insulate financial institutions from the types of enforcement actions like the Department of Justice (DOJ) False Claims Act actions that followed the Global Financial Crisis (GFC). By granting pre-emptive safe harbors and signaling reduced regulatory oversight, this Executive Order replicates the heightened creditor protections established under BAPCPA in 2005, which incentivized the excessive leverage and high-risk 'alternative' mortgage products that destabilized the financial system in 2008-2009 (Lewis (2023, 2021)). Strengthening creditor rights in this manner creates a moral hazard, effectively shielding lenders from liability in anticipation of a resurgence in high-risk, non-traditional lending. By effectively immunizing creditors from liability, the Order promotes a return to the exploitative lending that precipitated the Global Financial Crisis and signals a regulatory retreat precisely as lending risks are projected to rise. This rollback of oversight threatens to destabilize the financial system by shielding lenders from the consequences of increased exposure to high-risk assets.

References:

- Hamdi, N., Jiang, E. X., Lewis, B. A., Padi, M., & Pal, A. (2023). *The Rise of Nonbanks in Servicing Household Debt* (SSRN Scholarly Paper No. 4550175). Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4550175
- Lewis, B. A. (2025). Bank Leverage Restrictions in General Equilibrium: Solving for Sectoral Value Functions. *Journal of Risk and Financial Management*, 18(9), 519. <https://doi.org/10.3390/jrfm18090519>
- Lewis, B. A. (2023). Creditor rights, collateral reuse, and credit supply. *Journal of Financial Economics*, 149(3), 451–472. <https://doi.org/10.1016/j.jfineco.2023.06.001>
- Lewis, B. A. (2021). *The Impact of Warehouse Collateral Value on Mortgage Originations* (SSRN Scholarly Paper No. 4423818). Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4423818
- Lewis, B. A., Padi, M., & Wang, X. (2025). *The Cost of Servicing Debt Pools* (SSRN Scholarly Paper No. 5386507). Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5386507
- Morgan, D. P., Iverson, B. C., & Botsch, M. J. (2012). Subprime Foreclosures and the 2005 Bankruptcy Reform. <https://www.newyorkfed.org/medialibrary/media/research/epr/12v18n1/1203morg.pdf>