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CUNA

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September 16, 2019

ATTN: ATR/QM ANPR
Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2019-0039
ATR/QM ANPR

Dear Director Kraninger:

On behalf of America's credit unions, thank you for the opportunity to respond to the Advance Notice of Proposed Rulemaking (ANPR) on the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z).

As the largest credit union advocacy organization in this country, the Credit Union National Association's (CUNA) state and federal credit unions currently serve over 115 million members. Many of those members rely upon their credit union to meet their housing finance needs. In fact, in 2018 alone, credit unions extended nearly $50 billion to members in the form of fixed-rate, first mortgages.[1] Accordingly, access to and the availability of the secondary mortgage market and the liquidity that market provides are key concerns for credit unions and the members that they serve.

Consistent with those concerns, CUNA's members have adopted a core set of Credit Union Principles for Housing Finance Reform.[2] Those principles include the need for a smooth and orderly transition to a reformed housing finance market, while also preserving mortgage affordability and access. Though the Consumer Financial Protection Bureau (CFPB or Bureau) is not directly tasked with leading the Administration's reform efforts, there can be little doubt that the agency's decisions relating to the Government-Sponsored Enterprise (GSE) Patch will have a significant impact on the housing market's future. Accordingly, it is with these principles in mind that we respectfully offer the following commentary, on behalf of America's credit unions

[1] https://www.ncua.gov/analysis/Pages/call-report-data/reports/paca-facts/paca-facts-2018-Q1.pdf.
[2] https://www.cuna.org/uploadedFiles/Advocacy/Related_items/Credit-Union-Principles-for-Housing-Finance-Reform.pdf.

and their members, with respect to the Bureau's advance notice of proposed rulemaking on the expiration of the qualified mortgage patch for the government sponsored enterprises.

Specifically, we urge the Bureau to couple any expiration or limited extension of the GSE patch with a revision to the overall ability-to-repay regulations that would eliminate: (1) the 43% debt-to-income ratio and (2) the Appendix Q income verification rules as prerequisites for a mortgage loan to satisfy the requirements of the safe harbor created by the qualified mortgage definition. Each of these actions is essential to preserving access to affordable mortgage credit for millions of credit union members and ensuring the smooth and orderly transition of the secondary mortgage market.

The GSE Patch has Played a Critical Role in Ensuring Access to Affordable, Responsible Mortgage Credit for America's Credit Union Members─Many of Whom are Traditionally Underserved.

As noted by the Bureau in its initial release of the ability-to-repay rule, the rigid requirements imposed by the qualified mortgage definition were never intended to represent the outer limits of responsible mortgage lending. To the contrary, the GSE Patch has provided an alternative to the debt-to-income ratio threshold, as well as relief from the rigid requirements for verifying and calculating income, assets, and debts for debt-to-income ratios under Appendix Q for non-W-2 wage earners since the establishment of the qualified mortgage criteria. As a result, the GSE Patch has facilitated responsible access to homeownership for approximately 3.3 million creditworthy borrowers who collectively represent nearly 20 percent of the loans guaranteed by the GSEs over the last 5 years. Many of those borrowers were credit union members.

As not-for-profit, financial cooperatives, all federally-insured credit unions have a specified mission "to meet the credit and savings needs of consumers, especially persons of modest means." Research by the Urban Institute, using privately held data by financial analytics firm, Recursion Co., recently found that traditionally underserved groups have been key beneficiaries of the GSE patch and concluded that "[l]etting the patch expire in 2021 with no change will further disadvantage these already underserved groups."[3]

These findings are consistent with the information CUNA has received from our credit union members. In a survey conducted by CUNA in order to provide data responsive to the Bureau's advance notice, 8 out of every 10 credit unions surveyed indicated that the mere elimination of the GSE patch, without modifications to the underlying ability-to-repay rule, would make it more difficult for credit unions to advance their statutory mission of serving individuals of modest means by delivering mortgage credit to three key categories of consumers:

(1) working-class credit union members;[4]

[3] Laurie Goodman, "New Data Confirm the Urgency of Addressing the Expiration of the GSE Patch," Urban Institute, available at https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch (March 25, 2019) (last accessed 09/14/19).

[4] 84.34% of CUNA survey respondents strongly agreed that the elimination of the GSE Patch without changes to the ATR rule would make it much more difficult for their credit union to offer mortgages to average working-class consumers.

(2) lower-income credit union members;[5] and
(3) credit-union members living in underserved rural areas.[6]

Given that reality, the elimination of the GSE Patch—in the absence of additional regulatory changes to the underlying requirements of the ability-to-repay standard and qualified mortgage safe harbor—would severely hamper credit unions' ability to fulfill their specified mission in the mortgage market.

That challenge would come at a time when more traditionally underserved consumers are looking to credit unions to fulfill their mortgage credit needs. For example, between 2007 and 2016, bank growth in the total number of mortgage loans to low and moderate-income consumers decreased by 56 percent.[7] In contrast, a 48.1% increase in mortgage lending to those same communities occurred among credit unions.[8]

Should the Bureau Move Forward with Proposing the Expiration of the GSE Patch, it is Essential that the Proposal Modify the Underlying Ability-to-Repay Requirements and QM Rule by Eliminating the 43 % Debt-to-Income Ratio and Appendix Q Requirements from the Safe Harbor.

The Bureau designed the original ability-to-repay standard with three core components that mutually reinforce the statutory mandate for creditors to lend to consumers safely: (1) comprehensive underwriting; (2) a set of product restrictions that reinforce the law's safeguards that consumers have the ability to repay their loans under the qualified mortgage definition; and (3) safe harbor protections that create an incentive for mortgage creditors to produce ability-to-repay-compliant, qualified mortgage loans. These three regulatory levers collectively encourage creditors to serve customers through sound, fully-underwritten, safe, and affordable mortgages. CUNA firmly believes that, after the Patch expires, the best way to enable fair market competition across all lending channels to continue, while also ensuring that creditworthy individuals can be served in a safe and sound manner under the existing framework, is to eliminate the debt-to-income ratio for prime and near-prime loans and, with it, Appendix Q.

Credit unions, in particular, report positive lending experiences for mortgage loans made above the 43% debt-to-income ratio. Results from CUNA's survey show that more than 93% of credit unions indicate that mortgage loans issued above the 43% debt-to-income ratio performed at or above the same level as traditional qualified-mortgage compliant loans below the threshold.[9] In fact, 51.8% of all credit unions surveyed reported that the loans performed above average and no credit unions reported below-average performance. These responses support CUNA's belief that the lending standards imposed under the GSE patch are, in fact, sufficient in accomplishing the

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[5] 80.73 % of CUNA survey respondents strongly agreed that the elimination of the GSE Patch without changes to the ATR rule would make it much more difficult for their credit union to offer mortgages to lower-income consumers.

[6] 84.35% of CUNA survey respondents strongly agreed that the elimination of the GSE Patch without changes to the ATR rule would make it substantially more difficult for credit union members in underserved rural areas to obtain mortgages.

[7] Source: FFIEC and CUNA Data Analysis.

[8] *Id.*

[9] 4.8% of credit unions responding to this survey question reported that they do not currently make mortgage loans above the 43% DTI ratio.

Bureau's objective of enforcing product restrictions and safeguards that ensure that consumers have the ability to repay their loans.

Nevertheless, the failure to allow loans currently compliant with the GSE patch to continue to benefit from the legal safe harbor created by the qualified mortgage definition would undoubtedly produce a chilling effect on credit union lending to the affected category of consumers. Many credit unions, as smaller financial institutions with more limited staffing and resources, would be unable to assume the litigation risk that would accompany mortgage lending above the 43% debt-to-income ratio or without strict compliance to the income verification requirements of Appendix Q if those loans were no longer guaranteed the benefit of a legal safe harbor. That result would lead to a disruption to access to mortgage credit in communities and for consumers that need it the most. Given credit unions' information indicating these loans perform at or above the same level as loans satisfying the traditional qualified mortgage criteria, CUNA firmly believes that eliminating rigid adherence to the 43% debt-to-income ratio and Appendix Q verification requirements in the underlying qualified mortgage definition would enable credit unions to continue providing access to responsible mortgage credit without introducing additional credit risk into the marketplace or disrupting access to credit for millions of traditionally underserved consumers.

Conclusion

CUNA recognizes and applauds the Bureau's efforts to solicit opinions in advance of any proposed rulemaking relating to the expiration of the GSE Patch under the ability-to-repay standard. In that process, however, CUNA urges the Bureau to take special note of the challenges that smaller mortgage lenders, such as credit unions, that provide mortgage credit would face in the absence of modifications that would expand the qualified mortgage safe harbor to include loans above the 43% debt-to-income threshold and allow alternative forms of income verification than those presently required by Appendix Q.

On behalf of America's credit unions and their more than 115 million members, thank you very much for your consideration of our views.

Sincerely,

Mitria Wilson
Sr. Director of Advocacy and Counsel
CUNA