Credit Union National Association
CUNA

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Office of Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition; Docket No. CFPB-2020-0028; RIN: 3170-AA98.

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members. On behalf of our members, we are writing regarding the Consumer Financial Protection Bureau's (CFPB or Bureau) notice of proposed rulemaking to create a new category of Qualified Mortgages (Seasoned QMs) for first-lien, fixed-rate covered transactions that meet certain performance requirements over a 36-month seasoning period in addition to certain specified criteria.[1]

Background

Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability-to-repay (ATR) any residential mortgage loan, and loans that meet Regulation Z's requirements for "qualified mortgages" (QMs) obtain certain protections from liability.[2] Regulation Z contains several categories of QMs, including the General QM category and a temporary category (Temporary GSE QM loans) of loans that are eligible for purchase or guarantee by government-sponsored enterprises (GSEs) while they are operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The Bureau has two separate pending proposed rulemakings addressing an extension of the subset date for the Temporary GSE QM loan and making amendments to the General QM Loan category.[3]

In this proposal, the Bureau would establish a new "Seasoned QMs" category for first-lien, fixed-rate covered transactions that meet certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. The Bureau intends for the Seasoned QM definition to serve as a complement to the existing QM definitions with the goal of ensuring continued access to responsible, affordable mortgage credit for consumers.

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[1] Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition, 85 Fed. Reg. 53568 (August 28, 2020).
[2] Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6407 (January 10, 2014).
[3] Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date, 85 Fed. Reg. 41448 (July 10, 2020); Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 (July 10, 2020).

Under the proposal, for a loan to be eligible to become a Seasoned QM, the creditor would be required to *consider* the consumer's debt-to-income (DTI) ratio or residual income and verify the consumer's debt obligations and income. Similar to provisions in the Rule that create a QM category for certain portfolio loans originated by certain small creditors (Small Creditor QM loans), the proposal would not specify a DTI limit, nor would it require the creditor to use Appendix Q to Regulation Z in calculating and verifying debt and income. In addition, a loan generally would only be eligible to "season" if the creditor holds the loan in portfolio until the end of the seasoning period. To meet the proposed performance requirements, covered transactions must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period.

The proposal generally defines the seasoning period as 36 months beginning on the date on which the first periodic payment is due after loan consummation. Failure to make full contractual payments would not disqualify a loan from eligibility to become a Seasoned QM if the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, as long as certain conditions are met. However, time spent in such a temporary accommodation would not count towards the 36-month seasoning period, and the seasoning period could only resume after the temporary accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change as defined in the proposal.

General Comments

As not-for-profit, financial cooperatives, credit unions have a specified mission "to meet the credit and savings needs of consumers, especially persons of modest means."[4] Because of their unique structure and mission, credit unions have always been committed to matching their member-owners with safe, sustainable mortgages that they can afford to repay. That is why credit union mortgages have fared better than others, even during the financial crisis that led to the initial ATR/QM Rule.[5]

In addition, many credit unions are small lenders, with median assets of credit unions in Q1 2020 equaling only $37.5 million.[6] Despite their relatively small size, credit unions often punch above their weight in the low- and moderate-income household mortgage market, collectively originating a record of almost $180 billion in first-lien mortgages in 2019.[7] For these reasons, credit unions are particularly reliant on the ability to originate safe and sustainable mortgages with reasonable terms for their members to remain within the QM safe harbor and secure the highest level of liability protections.

In recognition of the importance of the QM safe harbor to the mortgage market, CUNA supports the Bureau's recent initiatives intended to broaden its QM rules through modifications to the General QM category and the current proposal to establish a new "Seasoned QM." The potential of a Seasoned QM category to aid in the expansion of the residential mortgage market in a manner that balances consumer access to affordable credit with meaningful consumer protections is an appropriate use of the CFPB's rulemaking authority and consistent with its statutory mission.

[4] Credit Union Membership Access Act, Pub. L. No. 105-219, § 2(4), 112 Stat. 913, 914 (1998).
[5] See, e.g., Jordan van Rijn and Kangli Li, Credit Union and Bank Subprime Lending in the Great Recession, December 19, 2019, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3506873 (stating that "bank delinquencies as a percentage of total loans rose more than sevenfold from 0.75% in 2006 to 5.60% in 2009; […] credit union delinquencies rose from 0.73% in 2006 to just 1.82% in 2009.").
[6] Sources: National Credit Union Administration (NCUA) credit union call report data; CUNA analysis.
[7] Id.

While CUNA generally supports the proposed Seasoned QM category, we have additional feedback for the Bureau to consider:

Subordinate-Lien Loans

Under the proposed rule, only first-lien loans would be eligible for the Seasoned QM designation.[8] CUNA recommends the Bureau amend its proposal to include closed-end subordinate-lien loans within the scope of the Seasoned QM category.[9] If the Bureau is concerned with its proposed performance requirements as applied to subordinate-lien loans, then the Bureau could also consider modifications to those requirements in the subordinate-lien loan context. However, the blanket ineligibility of subordinate-lien loans from the Seasoned QM category appears to be inconsistent with the Bureau's general approach to QMs, including the proposed amendments to the General QM category.

30-Day Delinquency Limit & Pandemic-Related Impacts

The proposal would require a Seasoned QM loan to have no more than two 30-day delinquencies and no 60-day delinquencies, unless there is a "qualifying change" in connection with a disaster or pandemic-related national emergency.[10] CUNA appreciates the Bureau incorporating a "qualifying change" exception due to a disaster or pandemic-related emergency into its proposal. Such an accommodation for uncontrollable events is exactly the type of flexibility CUNA has previously requested the Bureau consider integrating into its rulemakings in response to the COVID-19 pandemic.

CUNA also recommends the Bureau permit up to three 30-day delinquencies during the seasoning period. This additional flexibility would permit creditors and their borrowers to continue working through medium- and long-term economic changes caused by the unprecedented coronavirus pandemic, which is still ongoing. This proposal notes that "[t]he COVID–19 pandemic has had a significant effect on the U.S. economy . . . [and] . . . has resulted in a contraction of mortgage credit availability for many consumers."[11] Expanding the Seasoned QM category to loans with up to three 30-day delinquencies would recognize that uncertainty and help maintain consumers' access to credit in regions hardest hit by the pandemic or similar economic difficulties that may arise in the future.

Mortgage Loans Held in Portfolio Prior to the Seasoned QM Final Rule

The proposal states that the Seasoned QM category will only apply for loans consummated on or after the rule's effective date. Meanwhile, credit unions currently hold mortgage loans in portfolio that would meet the requirements of the Seasoned QM in all respects except for having an origination date prior to the rule's adoption. We recommend the CFPB permit loans currently being held in portfolio to be eligible for the new Seasoned QM category, and any loan meeting the specified requirements of the proposed rule to be designed as a Seasoned QM as of the effective date of the rule.

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[8] Proposed § 1026.43(e)(7).

[9] See, CUNA Comment letter on Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z); Docket No. CFPB-2020-0023/RIN 3170-AA83 (September 21, 2020) at p. 3, available at https://www.cuna.org/uploadedFiles/Advocacy/Priorities/Removing_Barriers_Blog/CUNA%20HPML%20Escrow%20Exemption%20Comment%20Letter%20-%20FINAL.pdf (pointing out the need to incentivize fully amortizing, closed-end subordinate lien loan products for borrowers with lower credit scores.).

[10] Proposed § 1026.43(e)(7)(iv)(C)(2).

[11] Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition, 85 Fed. Reg. 53568 at 53573 (August 28, 2020).

Effective Date

In response to the Bureau's request for comment on the effective date of this proposed rule, the Bureau should align that date with the publication of the final General QM rule. By providing multiple avenues to QM protection as the GSE QM Patch sunsets, the Bureau can effectively prevent disruptions to the mortgage market.

Conclusion

We look forward to working with the Bureau to ensure credit unions members continue to have access to responsible, affordable mortgage loans from community-based lenders. On behalf of America's credit unions and their more than 120 million members, thank you for your consideration.

If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,

Alexander Monterrubio
Senior Director of Advocacy & Counsel