August 10, 2020

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

Re: Qualified Mortgage (QM) Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date; Docket No. CFPB-2020-0021/RIN 3170-AA98.

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America’s credit unions and their 115 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 amend Regulation Z to replace the sunset date of the Temporary Government-Sponsored Enterprises (GSEs) Qualified Mortgage loan definition (Temporary GSE QM or GSE Patch) with a provision that extends the availability of the Temporary GSE QM until the effective date of a final rule issued by the Bureau amending the General QM loan definition.

Background

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule or Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. The Rule defines several categories of QMs that, when certain requirements are met, are given protections from liability.

One QM category defined in the Rule is the “General QM loan” category. These loans must comply with the Rule’s prohibitions on certain loan features, its points-and-fees limits and certain underwriting requirements, including a 43% debt-to-income (DTI) ratio, calculated in accordance with requirements contained in the Rule’s Appendix Q. The Rule also establishes a “Temporary GSE QM” defined as mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QM loans and (2) are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac while under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). Pursuant to the Rule, the GSE Patch expires for any GSE that exits the current FHFA conservatorship or on January 10, 2021, whichever occurs first. Since the Rule’s finalization in 2014, Temporary GSE QMs have come to represent a large share of the residential mortgage loan market. In 2019 alone, credit unions originated a record of almost $180 billion in first-lien mortgages, selling over 35% into the secondary mortgage market.3

3 Sources: National Credit Union Administration (NCUA) credit union call report; CUNA analysis.
In a separate notice of proposed rulemaking, the Bureau has proposed, among other things, amendments to remove the DTI limit from the General QM loan definition and replace it with a limit based on the loan’s pricing.\(^4\) In considering this proposal and the GSE Patch’s impending expiration, the CFPB has concluded that extending the Temporary GSE QM loan definition to expire upon the effective date of the final rule amending the General QM loan definition would ensure “responsible, affordable credit remains available to consumers.”\(^5\)

For the above reason, the Bureau has proposed to extend the sunset date of the Temporary GSE QM loan definition to the effective date of a final rule to be issued by the Bureau amending the General QM loan definition. The Bureau does not intend for this effective date to occur prior to April 1, 2021. The Bureau has not proposed amendments to the Rule provision stating that the Temporary GSE QM loan category would expire for a GSE exiting conservatorship.

**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.”\(^6\) Research by the Urban Institute, using privately held data, 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.”\(^7\) Credit unions work every day to better their communities and secure their members’ financial future. It is critical that the regulatory structure to which credit unions are subject, as well as the regulations that they must follow, enable them to continue meeting the diverse and evolving financial services needs of America’s credit union members.

In prior comments to the Bureau on the ATR/QM Rule, CUNA called on the Bureau to couple any expiration or limited extension of the GSE Patch with additional revisions to the overall ability-to-repay regulations that would eliminate the 43% DTI ratio and the Appendix Q income verification rules as prerequisites for a mortgage loan to satisfy the requirements of the safe harbor created by the General QM definition.\(^8\) We continue to believe this coordination is critical to ensuring the smooth and orderly transition of the secondary mortgage market and, as a result, we are pleased the Bureau has chosen to propose an extension of the Temporary GSE QM’s expiration in conjunction with its proposal to amend the General QM definition. CUNA will provide specific comments on the proposal amending the General QM definition in response to that separate rulemaking.

Regarding the proposed extension of the GSE Patch’s sunset date, CUNA supports the extension as a prudent and necessary action to ensure consumers’ continued access to affordable mortgage loans while the Bureau completes its rulemaking on the General QM definition. We strongly believe the CFPB should avoid gaps in QM coverage that would disadvantage borrowers and create uncertainty in the nation’s economically vital mortgage lending market. Accordingly, while we support the extension, CUNA respectfully recommends the Bureau consider adopting a longer extension or transition period to avoid putting credit unions in a position of needing to effectively “flip a switch” on QM compliance on a date

---


\(^5\) Extension of Sunset Date, 85 Fed. Reg. 41448 at 41456.


close to issuance of a final QM rule. Instead, the Bureau should ensure an adequate adjustment period for the market to adapt to significant changes in the QM categories.

While CUNA generally supports the proposed amendments to the ATR/QM Rule, we believe the Bureau should consider the following:

**Ensure that the effective date the GSE Patch will sunset allows for a gradual transition period for QM compliance.**

As the Bureau noted in its proposal, the Temporary GSE QM category represents a large share of the overall residential loan market. In fact, the GSE Patch has facilitated responsible access to homeownership for approximately 3.3 million creditworthy borrowers, including many credit union members, who collectively represent nearly 20 percent of the loans guaranteed by the GSEs over the last 5 years. Given the foundational importance of the GSE Patch to the residential mortgage market, CUNA believes it would be in the best interest of both consumers and mortgage lenders for the Bureau to adopt an extended and gradual transition period that would account for time to “test out” the amended General QM loan definition and ensure there are no negative unintended consequences for borrowers of modest means or underserved groups - the core constituency of America’s credit unions. At minimum, absent the end of the conservatorship of a GSE, the GSE Patch should remain in effect for 12 months following the adoption of a final General QM rule, so that credit unions and other market participants can adapt to the new requirements and provide critical feedback about the efficacy of the new rule prior to the elimination of the GSE Patch.

In addition, it would be ill-advised and short-sighted for the Bureau not to consider the impact the COVID-19 pandemic is currently having on the economy, credit markets, and consumers’ financial well-being in moving forward with this rulemaking. Although CUNA supports the Bureau moving forward with this rulemaking due to the time-sensitive nature of the GSE Patch’s expiration, we also believe the proposal should not occur in a vacuum. The Bureau must recognize the effect these unprecedented external forces are having on credit union employees, compliance personnel, and members and the difficulty for leanly staffed credit unions to revamp systems and underwriting approaches during a short transition period. In light of these considerations, an extended transition period would provide certainty to the market, avoid taxing credit union resources during a fragile time, and ensure consumers do not experience an unintended drop in credit availability.

**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 115 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) 235-3390 or dsmith@cuna.coop.

Sincerely,

Damon Y. Smith
Senior Director of Advocacy & Counsel

---