September 8, 2020

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


Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America’s credit unions and their 120 million members. On behalf of our members, we write to comment on the Consumer Financial Protection Bureau’s (CFPB or Bureau) notice of proposed rulemaking to amend Regulation Z to, among other things, remove the General QM loan definition’s 43 percent debt to income (DTI) limit and replace it with a price-based threshold.¹

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.² The Rule defines several categories of QMs that, when certain requirements are met, are afforded protections from liability.

One QM category defined in the Rule is the “General QM” loan category. These General QMs must comply with the Rule's prohibitions on certain loan features, points-and-fees limits and certain underwriting requirements, including a DTI ratio of no more than 43%, calculated in accordance with requirements contained in the Rule’s Appendix Q.³ The Rule also established a temporary “GSE QM” defined as mortgages that (1) comply with the loan-feature prohibitions and points-and-fees limits applicable to General QM loans and (2) are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac (together, the GSEs) while under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA).⁴ The GSE QM is scheduled to expire as of January 10, 2021 or any earlier end of the current FHFA conservatorship of the GSEs. The Bureau proposed an extension of the temporary GSE QM expiration date in a separate rulemaking.⁵ The newly proposed expiration date is timed to occur upon the

³ 12 CFR 1026.4(e)(2)(i)-(vi), App. Q.
⁴ 12 CFR 1026.4(e)(2)(i)-(iii) and (e)(4).
effective date of this amendment to the General QM definition to ensure “responsible, affordable credit remains available to consumers.”

Since the current Rule’s finalization in 2014, temporary GSE QMs have continued to represent an outsized share of the residential mortgage loan market, in part because of lender difficulties complying with the strict General QM requirements. This Notice responds to those difficulties by proposing, among other things, amendments to remove the DTI limit (and Appendix Q and its corresponding DTI calculation requirements) from the General QM loan definition and replace it with a limit based on the loan’s pricing. Specifically, under this proposal a loan meets the General QM loan definition when it (i) meets the existing product-feature and underwriting requirements and limits on points and fees, and (ii) the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than two percentage points as of the date that the interest rate is set. This excess is hereinafter referred to as the loan’s “spread.” Because loan originators determine the spread based on numerous risk factors, including analysis of DTI, the Bureau has determined that it is “a strong indicator of a consumer’s ability to repay and is a more holistic and flexible measure of a consumer’s ability to repay than DTI alone.”

Although the proposal eliminates the prescriptive and capped DTI requirements, it specifically requires the creditor to still “consider the consumer’s income or assets, debt obligations, and DTI ratio or residual income and verify the consumer’s current or reasonably expected income or assets . . . current debt obligations, alimony, and child support.” In addition, the Bureau is retaining safe harbor protections from liability for a General QM with a spread that is less than 1.5 percentage points (or 3.5 percentage points for subordinate lien transactions), and the rebuttable presumption of compliance for first lien loans with spreads of 1.5 to 2 percentage points, which a plaintiff could overcome by showing that the lender failed to properly evaluate the borrower’s ability to repay.

In sum, the Bureau has proposed these and other amendments to the General QM requirements so that the General QM can replace the temporary GSE QM loan category as the primary method for lenders to achieve the safe harbor or rebuttable presumption protections from liability.

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.” 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 many others, even during the financial crisis that led to the initial ATR/QM Rule. In addition, many credit unions

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6 Extension of Sunset Date, 85 Fed. Reg. 41448 at 41456.
7 Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 at 41721 (finding that since the Rule was adopted in 2014, “the GSEs’ share of the conventional, conforming purchase-mortgage market . . . increase[d] . . . reaching 71 percent in 2017”).
8 Id. at 41717 and 41735. A higher threshold of 3.5% would apply to smaller loan amounts and for subordinate lien transactions.
9 Id.
10 Id.
11 Id.
13 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.”).
are small lenders, with median assets of credit unions in Q1 2020 equaling only $37.5 million.\textsuperscript{14} Despite their relatively small size, credit unions often punch above their weight in the mortgage market, collectively originating a record of almost $180 billion in first-lien mortgages in 2019, 35% of which were sold to the GSEs.\textsuperscript{15} For these reasons, credit unions are particularly reliant on the ability to originate safe and sustainable mortgages with reasonable terms for their members within the QM safe harbor to secure its liability protections.

In recognition of the importance of the borrower and lender QM protections to credit unions, CUNA has submitted numerous comments to the CFPB on the ATR/QM Rule calling for the elimination of the 43% DTI and Appendix Q requirements.\textsuperscript{16} We appreciate this amendment as both a positive response to those requests and an important step in turning the General QM into a viable option for credit union originations. The proposed pricing-based requirement for General QM designation eliminates the outdated 43% DTI cap and overly prescriptive calculation methods, allowing credit unions to continue providing sustainable mortgages to members with higher DTI ratios.

We also appreciate the fact that the Bureau is coordinating the effective date of this General QM Rule and the sunset of GSE QM to ensure the smooth and orderly transition of the secondary mortgage market to this new regime. However, as we stated previously:

Given the foundational importance of the GSE [QM] 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 [QM] 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 [QM].\textsuperscript{17}

As the Bureau notes in its discussion of the 2013 Rule, “[i]n making the . . . GSE QM loan definition temporary, the Bureau sought to ‘provide an adequate period for economic, market and regulatory conditions to stabilize,’ and ‘a reasonable transition period to the general qualified mortgage definition.’”\textsuperscript{18} Those words of 2013 remain true today as we overcome the economic impact of the COVID-19 crisis. We reiterate our request for the Bureau to provide a 12-month test period following the effective date of this

\textsuperscript{14} Sources: National Credit Union Administration (NCUA) credit union call report data; CUNA analysis.

\textsuperscript{15} Id.


\textsuperscript{18} Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 at 41719 (July 10, 2020) (quoting 78 FR 6408, 6534 (Jan 30, 2013)).
Rule as an adequate and reasonable period to transition from the use of the temporary GSE QM to this amended General QM definition. Given the fact that the Bureau assessed the impact of the GSE QM loan definition five years after releasing the Rule in 2013, it is reasonable to request a shorter trial period to assess the impact and attractiveness of the new General QM rule.

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

**Increase the Safe Harbor Threshold to 2 Percent from 1.5 Percent**

The proposed Rule specifically asks for comment on whether the it should retain the current thresholds separating safe harbor from rebuttable presumption General QM loans or whether the Bureau should adopt higher or lower safe harbor thresholds.\(^9\) We believe that loans originated in accordance with the amended Rule but having spreads of 2 percent or lower would effectively serve as proxies for consumers’ ability to repay the loans at the time of origination and better ensure access to credit for lower-income and minority communities that credit unions serve.

The Bureau’s notice provides sufficient evidence that a 2 percent spread for General QM “safe harbor” designation would provide similar indicia of ability to repay as the 1.5 percent spread. According to an analysis from the Urban Institute, in 2018 there was only a one percentage point increase in early delinquency rates for mortgages with a spread over APOR of 1.50-1.99 percent versus those with a spread of 1.0-1.49 percent.\(^20\) Similarly, when spread and DTI are examined together, 2018 early delinquencies for 1.0-1.49 percent spreads remain reasonably close compared to delinquencies for the 1.50-1.99 percent spreads, even remaining unchanged for those loans with DTI’s ranging from 44%-50%.\(^21\) This data is more convincing than the housing bubble-era loans included in the Bureau’s 2002-2008 origination analysis, although it is still noteworthy that early defaults for those pre-recession spreads are similarly close when comparing the 1.5-2.0 percent spreads against the 1.0-1.5 percent cohorts.\(^22\) Third party analyses have reached the same conclusion about the relatively small increase in risk associated with loans priced with a spread up to 2 percent.\(^23\)

We share the Bureau’s concerns about potential contraction of credit under this amended Rule, particularly for low-income and minority borrowers, and believe that concern can be substantially alleviated by increasing the safe harbor threshold.\(^24\) According to an analysis from the Urban Institute, “increasing the safe harbor threshold from 150 basis points to 200 basis points would not only reduce the racial and ethnic disparity but help increase lending volumes for every racial and ethnic group.”\(^25\) This benefit is achieved primarily because “minority households are much more likely to have mortgages with higher rate spreads than white households.”\(^26\) The Bureau should undertake this change because these benefits to underserved

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\(^9\) Id. at 41740.

\(^20\) Id. at 41732, Table 2.

\(^21\) Id. at 41733, Table 6.

\(^22\) Id. at 41732, Table 3.


\(^24\) Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 at 41740 (July 10, 2020) (“The Bureau acknowledges that some commenters to the ANPR suggested that the current safe harbor threshold is too low and may have an adverse impact on access to credit, including for minority consumers.”).

\(^25\) Karan Kaul, Laurie Goodman, Jun Zhu, *CFPB’s Proposed QM Rule Will Responsibly Ease Credit Availability: Data Show That It Can Go Further*, Urban Institute at p. 5

\(^26\) Id.
borrowers can be delivered without an undue increase in risk, and this approach is preferable to several alternatives described in the proposal.

Reject the Complicated Alternative and Hybrid Approaches

This proposal contains a number of alternative approaches to the pricing model for consideration and comment, including higher DTI requirements with flexibility in Appendix Q and hybrid approaches that adopt the spread requirement but include a higher DTI requirement as well. Each of these alternative proposals are less desirable than the price-driven model, in part because they continue the prescriptive use of DTI and inject complications and uncertainty similar to the problems identified with the current Rule. Because one of the primary goals of this rulemaking is to remove impediments to lender adoption of the General QM, the Bureau should keep the streamlined price-based approach and resist the urge to add or layer on additional considerations, no matter how well intentioned.

Use Indexing or Caps to Determine General QM Eligibility for Short Reset ARMs

Although short-reset Adjustable Rate Mortgages (ARMs) are a smaller part of the current mortgage market than in years past, credit unions may use ARMs as appropriate for the needs of their members. The Bureau’s proposed special rule for short-reset ARMS would require that the APR for the full term of the loan be calculated as the maximum interest rate in the first five years. This change mitigates the risk of payment shock in a sharply increasing interest rate environment, but it does so at the expense of reasonably underwritten ARM solutions that deserve the General QM protections. Given the fact that credit unions would still be subject to the ability-to-repay underwriting requirements in the Rule, and the prevalent use of reasonable caps and collars on such ARMs, the Bureau should reconsider this approach and use a fully indexed rate for the remaining loan term after the first 5 years, or establish reasonable secondary caps for rate changes allowed within the short-reset period, that would still allow the ARMs to be General QMs.

Conclusion

We thank the Bureau for this amendment to simplify and streamline the General QM definition, and we look forward to working with you to ensure credit union members continue to have access to responsible, affordable mortgage loans. On behalf of America’s credit unions and their 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) 235-3390 or dsmith@cuna.coop.

Sincerely,

Damon Y. Smith
Senior Director of Advocacy & Counsel

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27 Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 at 41770-41771 (July 10, 2020) (proposing, inter alia, raising the DTI cap at 45%-50%, or establishing DTI limit of 50% for loans with spreads at or above 1 percentage point.).
28 Short-reset ARMs are those that are 5 years or less.