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April 23, 2021

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Dear Secretary Yellen:

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 unintended consequences resulting from amendments<sup>1</sup> (the PSPA Amendments) to the Amended and Restated Preferred Stock Purchase Agreement between the United States Department of the Treasury (Treasury) and the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), acting through the Federal Housing Finance Agency (FHFA) as Conservator.

The PSPA Amendments require credit unions that sell to Fannie Mae and Freddie Mac (the Enterprises) to implement qualified mortgage standards<sup>2</sup> which the Consumer Financial Protection Bureau (CFPB or the Bureau) under Acting Director Uejio has proposed to delay.<sup>3</sup> During this delay, the Bureau intends to review and potentially repropose these standards.<sup>4</sup> Implementing these standards despite the CFPB's delay would be unnecessary, wasteful, and ultimately harmful for consumers as the implementation cost may also increase the cost of credit. CUNA urges Treasury to amend the PSPA Amendments to align the deadline for implementation by Sellers with any mandatory compliance deadline set by the Bureau to avoid these consequences.

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<sup>1</sup> Executed Letter Agreement for Fannie Mae from Secretary of the Treasury Steven T. Mnuchin to Director of the FHFA Mark A. Calabria (January 14, 2021), available at <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf>, and Executed Letter Agreement for Freddie Mac from Secretary of the Treasury Steven T. Mnuchin to Director of the FHFA Mark A. Calabria (January 14, 2021), available at <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Freddie%20Mac.pdf> (collectively, the PSPA Amendments).

<sup>2</sup> *Id.* at p. 10.

<sup>3</sup> Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date, 86 Federal Register 12839 (March 5, 2021).

<sup>4</sup> *See Id.* at 12840. *See also* CFPB, Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule (February 23, 2021), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_qm-statement\\_2021-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_qm-statement_2021-02.pdf).

## **The CFPB’s General Qualified Mortgage Final Rule and the PSPA Amendments**

Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability-to-repay (ATR) any residential mortgage loan, and mortgage loans that meet one of Regulation Z's several definitions of “Qualified Mortgages” (QMs) obtain certain safe harbor presumptions against liability.<sup>5</sup> Since 2013, a temporary QM definition has existed for mortgage loans eligible for purchase or guarantee by the Enterprises while they are operating under the conservatorship of the FHFA (Temporary GSE QMs).<sup>6</sup> This provision, sometimes referred to as the “GSE Patch,” was scheduled to sunset on January 10, 2021 or when the GSEs cease to operate under the conservatorship of the FHFA.

Temporary GSE QM originations represent a large and persistent share of the residential loan market, and the Bureau has stated that in order for the GSE Patch to sunset without causing an increase in prices or reducing the availability of credit, changes to the General QM definition were needed.<sup>7</sup> On October 20, 2020, the Bureau extended the GSE Patch sunset date to coincide with the mandatory compliance date of the General QM Final Rule.<sup>8</sup>

On December 29, 2020, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a final rule<sup>9</sup> revising the definition of a General Qualified Mortgage by replacing debt-to-income ratio (DTI) considerations with price-based thresholds (General QM Final Rule). The General QM Final Rule was scheduled to become effective March 1, 2021 with a mandatory compliance date of July 1, 2021.<sup>10</sup>

On January 14, 2021, Treasury issued the PSPA Amendments which added new Section 5.14 entitled “Acquisitions of Certain Loans.”<sup>11</sup> Subsection 5.14(c) required sellers to implement programs to ensure any Single-Family Mortgage Loan sold to the Enterprises is a QM as defined by Regulation Z, including the new General QM definition.<sup>12</sup> These provisions were required to be implemented by sellers on or prior to July 1, 2021,<sup>13</sup> aligning this deadline with the Bureau’s mandatory compliance deadline for the General QM Final Rule.

## **The Conflict Between the Bureau’s Proposed Delay and the Enterprises’ Policy Changes**

On February 23, 2021, the Bureau issued a statement confirming that the General QM Final Rule would become effective on March 1, 2021.<sup>14</sup> However, in this statement the CFPB also indicated

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<sup>5</sup> See Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6407 (January 30, 2013).

<sup>6</sup> *Id.*

<sup>7</sup> Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 FR 86308 (December 29, 2020).

<sup>8</sup> Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date, 85 FR 67938 (October 26, 2020).

<sup>9</sup> 85 FR 86308.

<sup>10</sup> *Id.* at 86384.

<sup>11</sup> PSPA Amendments, p. 9.

<sup>12</sup> PSPA Amendments, p. 10.

<sup>13</sup> PSPA Amendments, p. 9.

<sup>14</sup> CFPB, Statement on Mandatory Compliance Date of General QM Final Rule.

it is reviewing the General QM Final Rule and intends to delay the mandatory compliance deadline while it did so. On March 5, 2021, the Bureau issued a proposed rule delaying the mandatory compliance deadline until October 1, 2022.<sup>15</sup> In that proposal, the Bureau confirmed its intention to evaluate the General QM Final Rule and indicated it may initiate another rulemaking to reconsider the rule.<sup>16</sup>

During the proposed delay, credit unions may continue use the new price-based General QM definition, the old DTI-based General QM definition, and the Temporary GSE QM definition until October 1, 2022. This delay allows credit unions to avoid unnecessary cost implementing the new General QM definition while the Bureau considers replacing the General QM Final Rule with a new proposal. It makes little sense for a credit union or a vendor to invest significant time or cost on the necessary systems, processes, and training when the Bureau has indicated an intention to alter some or all of the General QM Final Rule prior to the mandatory compliance date.

However, on April 8, 2021, the Enterprises each issued notice of policy changes requiring Sellers to implement the CFPB's new General QM definition on or before July 1, 2021.<sup>17</sup> The Enterprises cited the PSPA Amendments as the basis for this policy change and stated the PSPA Amendments prohibit the Enterprises from purchasing loans made under the old DTI-based QM definition or the GSE patch after that deadline.

### **The Effect on Credit Unions and Necessary Corrections**

The Enterprises' policy changes and the PSPA Amendments eliminate any benefits to credit unions resulting from the delay and regulatory flexibility offered by the Bureau's proposal. It forces credit unions to implement the General QM Final Rule before it is required by the CFPB and knowing that the Bureau is likely to propose further changes. This represents a tremendous waste in resources and time for American's credit unions and offers no benefit to the Enterprises.

CUNA urges Treasury to further amend the PSPA Amendments to clarify that the provisions of Subsection 5.15 must be implemented on or prior to the mandatory compliance deadline for the QM Final Rule. This will allow for a floating deadline in parallel to both the mandatory compliance date for the new General QM definition and the sunset of the GSE Patch, creating efficiency and simplicity for credit unions and ensuring the smooth operation of the housing finance market.

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<sup>15</sup> Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date, 86 FR 12839.

<sup>16</sup> *Id.* at 12840.

<sup>17</sup> Fannie Mae Lender Letter LL-2021-09 – Introduction of Changes to Loan Eligibility Due to the PSPA and Qualified Mortgage Rule (April 8, 2021), available at <https://singlefamily.fanniemae.com/media/25566/display> and Freddie Mac Bulletin 2021-13 Updates in Response to the Amended Senior Preferred Stock Purchase Agreement (PSPA) – Government Loans and the CFPB Revised General QM Definition Rule (April 8, 2021), available at <https://guide.freddiemac.com/app/guide/bulletin/2021-13>.

## Conclusion

On behalf of America's credit unions and their more than 120 million members, thank you for your attention to this matter. If you have questions or require additional information, please do not hesitate to contact me at (202) 503-7184 or [elaberge@cuna.coop](mailto:elaberge@cuna.coop).

Sincerely,

A handwritten signature in black ink that reads "E Young LaBerge". The signature is written in a cursive, flowing style.

Elizabeth M. Young LaBerge  
Senior Director of Advocacy & Counsel

cc: The Honorable Mark A. Calabria, Director, Federal Housing Finance Agency