



CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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September 8, 2020

Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

***Re: Qualified Mortgage Definition Under the Truth In Lending Act
(Regulation Z), Docket CFPB-2020-0020***

To Whom it May Concern:

The U.S. Chamber of Commerce’s (“the Chamber”) Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to comment on the proposed rule (“Proposal”) issued by the Bureau of Consumer Financial Protection (“Bureau”) regarding the definition of a qualified mortgage or “QM” under the Truth in Lending Act (“TILA”).¹ Ensuring that qualified mortgages are properly defined is a critical matter for the mortgage market and the millions of Americans that it serves—and particularly as the expiration of the “GSE patch” approaches.²

We write to emphasize three points:

- The Bureau should proceed with its proposal to move to a pricing-based approach and to remove Appendix Q.
- The Bureau should ensure that the timing of the transition does not negatively affect consumers.
- The Bureau should ensure that its approach does not unduly affect subcategories of current qualified mortgages, such as second mortgages.

¹ See Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 (July 10, 2020) (the “Proposal”).

² Congress granted the Bureau authority to issue rules relating to the “Qualified Mortgage” provisions of the Dodd-Frank Act. Under a provision of those rules, mortgages subject to purchase by Fannie Mae or Freddie Mac are treated as qualified mortgages and thus trigger the legal protections provided by the Dodd-Frank Act. That provision—commonly referred to as the “qualified mortgage patch,” “QM patch,” or “GSE patch”—is set to expire in 2021.

By addressing these points, the Bureau would address concerns about the expiration of the GSE patch and its potential impact on consumers, support continued access to credit in the mortgage market, and facilitate implementation of the final rule in a manner that benefits consumers.

Analysis

1. The Bureau should proceed with its proposal to move to a pricing-based approach and to remove Appendix Q.

The mortgage market plays an extremely important role in Americans' lives and in the broader economy. As a result, we are concerned by the prospect of disruption in the mortgage market if the GSE Patch expires and the definition of a QM loan remains unchanged. In short, access to affordable credit would be reduced if the Bureau does not act. This is because, absent action by the Bureau, expiration of the patch would subject all loans to the current 43% debt to total monthly income (DTI) threshold. But that threshold will not be met in many cases (making the loan a non-QM loan) and the market does not currently offer broad options to consumers for non-QM loans. Thus, the Bureau correctly “anticipates that, with respect to loans that are currently Temporary GSE QM loans and would not otherwise qualify as General QM loans under the current definition, some will cost materially more for consumers and some would not be made at all.”³ In addition, the current pandemic will only make these issues worse. As the Bureau recognizes, “the slow development of the non-QM market, and the recent economic disruptions associated with the COVID-19 pandemic that may significantly hinder its development in the near term, may further reduce access to credit outside the QM space.”⁴

We welcome the Bureau's thoughtful consideration and analysis of the various options at its disposal to address these challenges in a manner that will achieve the goals of TILA. It is critical that the QM definition advance consumer protection goals by providing for a sound calculation of a consumer's ability to repay. It is also important, however, that the chosen definition support robust access to affordable credit and is sufficiently clear that lenders can effectively and efficiently comply with the governing regulatory framework.

We believe that the Bureau's proposed approach would accomplish these goals. In particular, we agree with the Bureau's conclusion that “a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure

³ Proposal, 85 Fed. Reg. at 41729.

⁴ Proposal, 85 Fed. Reg. at 41729.

of a consumer's ability to repay than DTI alone."⁵ We share the Bureau's concern that "imposing a DTI limit as a condition for QM status under the General QM loan definition may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of the consumer's financial capacity."⁶ We agree that "a consumer's DTI ratio is not the only way to measure financial capacity and is not a holistic measure of the consumer's ability to repay."⁷ We also would not support the adoption of a more complex, multi-factor test. As the Bureau explained in its 2011 ATR/QM proposal: "incorporating a multi-factor test or compensating factors into the QM definition would undermine the certainty for creditors and the secondary market of whether loans were eligible for QM status."⁸

We thus agree that moving to a pricing-based approach would benefit consumers and support the mortgage market going forward, including by providing compliance certainty to the extent possible. We would urge the Bureau, however, to raise the safe harbor threshold to 200 bps over APOR. We do not expect creditors to rely on the rebuttable presumption of compliance and extend any significant volume of loans priced between 150 bps and 200 bps over APOR. Nor do we expect any significant increase in default risk in that range. We thus would ask the Bureau to make this change in order to ensure appropriate consumer access to affordable credit.

We are also glad that the Bureau has recognized the challenges that financial institutions have faced in implementing Appendix Q, which has not been updated since 2013. The Bureau acknowledges that "based on extensive stakeholder feedback and its own experience, . . . appendix Q's definitions of debt and income are rigid and difficult to apply and do not provide the level of compliance certainty that the Bureau anticipated."⁹ We appreciate the Bureau's recognition of the challenges caused by Appendix Q and agree that the proper solution is to remove Appendix Q rather than to try to revise it at this time.

2. The Bureau should ensure that the timing of the transition does not arbitrarily affect consumers.

We appreciate the Bureau's focus on ensuring a smooth transition for consumers and lenders as the GSE patch expires and the Bureau revises the definition of qualified mortgages. We would ask that the Bureau continue to focus on the intricacies of this timing to ensure that consumers are not affected in an arbitrary way by the particular timing of their own mortgage processes. For example, we have heard

⁵ Proposal, 85 Fed. Reg. at 41726.

⁶ Proposal, 85 Fed. Reg. at 41726.

⁷ Proposal, 85 Fed. Reg. at 41728.

⁸ Proposal, 85 Fed. Reg. at 41728.

⁹ Proposal, 85 Fed. Reg. at 41729.

concerns that similarly situated consumers may be treated differently simply based on minor differences in the date of their loan applications. This may be the case, in particular, for borrowers that receive an application before the effective date of the new QM definition but whose loans will close after the GSE Patch expires. As we understand the Proposal, practically speaking, a lender would be unable to originate the loans in that instance. This is certain to cause confusion for borrowers and would create an arbitrary and unnecessary barrier to home ownership. We accordingly would urge the Bureau to work to remove any such unintended quirks caused by the interaction between the expiration of the GSE patch and the revision of the QM definition.

3. The Bureau should ensure that its approach does not unduly affect subcategories of current qualified mortgages, such as second mortgages.

We believe that it is important that any final rule issued by the Bureau not disrupt the mortgage market: loans that are currently defined as QM and are safe for consumers should continue to be treated as QM loans rather than suddenly falling outside of that definition because of a shift to a pricing-based approach. The Bureau's proposed approach generally would achieve that goal for GSE loans and a large portion of non-GSE loans. However, while a significant majority of loans that currently would qualify as QM loans would continue to do so under the Proposal, this is not universally true, and we would urge the Bureau to consider ways to include those remaining loans within the QM definition. Otherwise, those segments of the market would be subject to the same types of concerns about disruption, higher costs for consumers, and reduced access that have motivated the Bureau to address GSE loans.

For example, second mortgages that meet the current QM definition may be disproportionately excluded from the proposed QM definition. Second mortgages are an important option for consumers who need access to capital to fund larger expenses than credit cards and personal loans can generally cover. Typically, these loans have higher rates, in part due to factors other than the consumer's ability to repay:

- Unlike most first mortgages, second mortgages are commonly offered with some or all closing costs built into the interest rate (and therefore included in the APR) rather than charged up front to the consumer as third-party costs (and therefore excluded from the APR).
- Unlike first mortgages, second mortgages do not have a robust secondary market, limiting the options for how these loans are funded. As a result, holders of these loans may have higher cost of funds or capital, which in turn influences pricing.

As a result, many second mortgages that meet the current QM definition may not meet a purely pricing-based definition.

We would urge the Bureau to take reasonable steps to maintain consumer access to those loans across the various segments of the mortgage market by ensuring that they remain in the QM definition. Specifically, while we would not recommend moving away from the pricing-based definition as the threshold test, we would ask the Bureau to consider additional, alternative measures for higher priced mortgage loans that meet the current general QM definition.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long horizontal flourish extending to the right.

Tom Quadman