August 10, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
Comment Intake
1700 G Street NW
Washington, DC 20552

Re: Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Extension of Sunset Date; Docket CFPB-2020-0021

Dear Director Kraninger,

The Independent Community Bankers of America ("ICBA")[1] welcomes the opportunity to comment on the notice of proposed rulemaking ("NPR") published by the Consumer Financial Protection Bureau ("CFPB" or "Bureau") that would amend Regulation Z to extend the expiration date of the Temporary Qualified Mortgage ("QM") loan category. This category, also known as the GSE Patch, assigns QM status to loans purchased by the government sponsored enterprises ("GSEs") Fannie Mae and Freddie Mac. The GSE Patch is set to expire on January 10, 2021.

Background

In January 2013, the CFPB issued its final Ability to Repay ("ATR") and QM Standards rule that implemented relevant sections of the Dodd-Frank Act and amended Regulation Z.[2] The rule

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $5 trillion in assets, nearly $4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.
[2] https://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf

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became effective on January 10, 2014 and has since had a profound impact on mortgage lending for all lenders and mortgage borrowers alike.

The final rule requires all creditors to make a reasonable and good faith determination of a borrower's ability to repay their mortgage loan, including any other mortgage-related obligations such as property taxes, and to document and verify the information used in making that determination. The rule further describes the methods and types of information to be collected by the creditor to verify and validate the borrower's ability to repay the loan. The Bureau included Appendix Q in the final QM/ATR rule that provided detailed requirements for documenting and validating a borrower's ability to repay, including income and employment information, assets, outstanding debts, and credit history. The Bureau also specified a maximum debt-to-income ratio of 43 percent and required that the annual percentage rate may not exceed 150 basis points over the average prime offer rate. Loans meeting these requirements are deemed to be QM and provide creditors a legal safe harbor protection against borrower litigation. While providing a legal safe harbor to creditors was not required by the statute, the Bureau recognized that access to credit would be severely impacted if creditors were concerned with large numbers of consumers pursuing legal claims regarding their ability to repay their mortgage loan.

The 2013 ATR/QM rule also created a temporary QM category of loans eligible for guarantee or purchase by GSEs to be QM loans – the "GSE Patch"- with a legal safe harbor, set to expire the earlier of seven years after implementation or when the GSEs exited conservatorship. Lenders that originate and sell their mortgage loans to the GSEs therefore enjoy legal protections from liability against borrowers seeking damages. The GSE Patch has since facilitated access to homeownership for nearly 3.3 million creditworthy borrowers who exceeded the 43 percent debt-to-income QM threshold and together represent nearly 20 percent of the loans guaranteed by the GSEs over the last decade.[3] A study shows that the GSE Patch accounted for roughly 16% or nearly $260 billion in 2018 total loan origination volume.[4]

Response

[3] https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch
[4] https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-1.aspx

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ICBA appreciates the CFPB's consistent and meaningful efforts to reach out to industry stakeholders to better understand how the GSE Patch has impacted mortgage lending in the years following the Great Recession and how its expiration could impact the availability of mortgage credit. The NPR rightly addresses the harmful effects on the availability and cost of credit if the GSE patch expires before the Bureau amends the General QM requirements. As such, the NPR proposes to extend the GSE Patch until the effective date of a final rule modifying the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first. Furthermore, the NPR states that the Bureau's timeline for the final rule is likely to result in an effective implementation date of at least April 1, 2021. This estimated date reflects the separate proposed rule that proposes a six-month implementation period.

ICBA has been a constant voice in communicating to the Bureau how the QM Patch has had sweeping effects on the secondary mortgage market, allowing community banks to earn QM status and its corresponding legal protections on mortgage loans they sell to the GSEs. In a September 2019 letter[5], we urged the Bureau to extend the GSE Patch due to uncertainties about how expiration or any change to QM could affect underwriting standards in the conventional mortgage market. In recent months, COVID-19's detrimental impact on the broader economy further underscores our concerns about any potential disruptive effects.

ICBA strongly urges the Bureau to extend the GSE Patch until the later of January 2022 or one year from the finalization of any proposed rule. It is always critical that all stakeholders, especially community banks and other small lenders, have ample time to adjust to changes that impact or determine a borrower's ability to repay. As mentioned above, the Bureau's 2013 final rule amending Regulation Z allowed for 12 months between the rule's publication and its effective date. Given this precedent, as well as the scope and unprecedented nature of the current economic crisis resulting from COVID-19, ICBA urges the Bureau to adopt a similar timeline for the changes it proposes in its NPR on the General QM loan definition.

ICBA appreciates the opportunity to comment on the NPR and looks forward to

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[5] https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/icba-qm-anpr-cfpb-2019-0039.pdf?sfvrsn=6dc05317_0

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working with the CFPB throughout the process of finalization and implementation. If you have any questions regarding this letter, please contact me at ron.haynie@icba.org.

Sincerely,

/s/

Ron Haynie
Senior Vice President, Mortgage Finance Policy

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