3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

September 16, 2019

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

RE: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z) RIN 3170-AA98)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) advance notice of proposed rulemaking (ANPR) regarding the qualified mortgage (QM) definition under the *Truth in Lending Act* (TILA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. We appreciate the Bureau's consideration to revise the definition of a General QM in light of the expiration of the Temporary Government-Sponsored Enterprises (GSE) QM loan (Temporary GSE loan or GSE Patch). Credit unions are responsible lenders who help ensure their members do not obtain mortgages they cannot afford. NAFCU requests that if the Bureau does decide to allow the GSE Patch to expire, then viable alternatives should be adopted that allows credit unions the same protections and benefits, including access to the secondary market, and the ability to provide credit for their members. The Bureau should also grant an extension of the GSE Patch until finalization of any revisions to the General QM definition occur to alleviate market disruptions. In addition, NAFCU requests revisions to the debt-to-income (DTI) threshold that permit flexibility for credit unions while preserving important consumer protections.

General Comments

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) amended TILA to place certain obligations on the origination of consumer mortgages and helped to ensure safer mortgage origination after the financial crisis. According to the Bureau's ability-to-repay (ATR)/QM rule, lenders must make a reasonable and good faith determination, based on verified and documented information, that a borrower can repay a mortgage before extending the loan. The ATR/QM rule created the QM category of mortgage loans, which are presumed to comply with ATR requirements and provide lenders with certain legal protections. Dodd-Frank also created a second category, termed the Temporary GSE loan. The GSE Patch has been a key factor in credit unions' ability to lend to members of their communities, especially those of low- and moderate-income, to achieve homeownership.

The ATR/QM rule is an example of the "one-size-fits-all" approach to rulemaking that has caused unintended consequences in the mortgage industry. Many of NAFCU's members have decided to extend mortgages only meeting the definition of a General QM, as they are concerned about the ability to sell to the secondary market, and legal and regulatory risks associated with non-QM loans. In addition, there is increased financial risk of non-QM loans. Due to decreased marketability of non-QM loans, credit unions must hold these loans on their balance sheets, creating interest rate risk (IRR). IRR is a concern for credit unions, and in order to mitigate this risk they may refrain from originating non-QM loans.

Additionally, some credit unions have faced increased costs and significant compliance burdens because of the ATR/QM rule. According to NAFCU's 2018 *Federal Reserve Meeting Survey*, respondents reported that compliance expenses for mortgage regulation compliance have increased over 234% since 2010. Due to the hesitance of credit unions to extend non-QM mortgage loans, NAFCU is concerned that many otherwise qualified borrowers are not able to obtain mortgages. This impedes the critical role that credit unions play in helping consumers achieve homeownership.

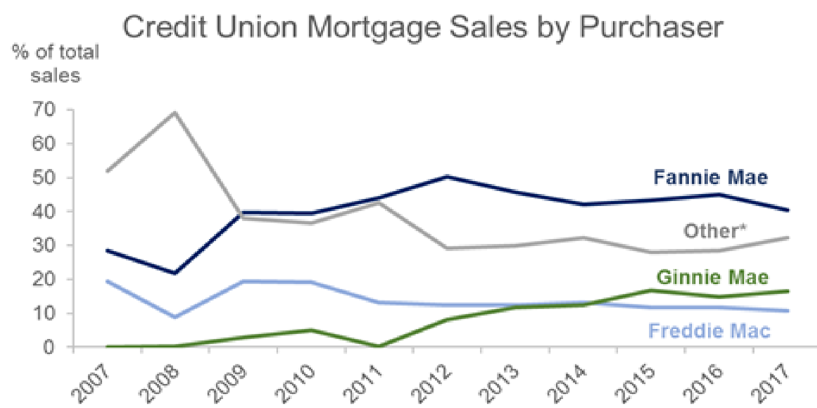
NAFCU remains concerned about the increasing costs of mortgage lending due to the ATR/QM rule, as well as adverse effects on origination volume, profitability, and member satisfaction. In addition, NAFCU members have expressed concerns with the expiration of the GSE Patch. The GSE Patch provides credit unions with the ability to sell their loans into the secondary market, generating vital liquidity to make more loans to their members. Therefore, NAFCU supports revisions to the General QM definition that maintain credit unions' ability to lend to their members and assist their local communities.

The GSE Patch

NAFCU has taken the longstanding position that the GSE Patch should be made a permanent QM category, because it provides credit unions with legal protections and certainty while allowing them to serve more members of their communities. NAFCU supports other alternatives to the GSE Patch, as outlined in this letter, which would achieve the same ends and ensure credit unions have continued access to the secondary market. NAFCU recognizes that other federal agencies, including the Federal Housing Finance Agency and the U.S. Department of the Treasury, also support allowing the GSE Patch to expire. Although NAFCU continues to support a permanent GSE Patch as an effective option, considering these political realities, NAFCU recommends the Bureau evaluate alternatives to the GSE Patch that would provide the same protections and benefits for credit unions. Additionally, the Bureau should grant an extension of the GSE Patch to accommodate a transition period in order to mitigate any market disruptions as credit unions move towards originating General QM loans.

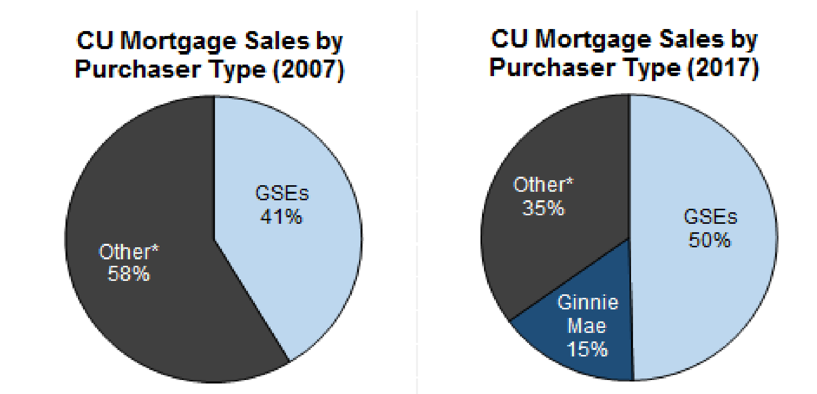
Currently, the GSE Patch is scheduled to expire on January 10, 2021 or upon the GSEs exiting conservatorship, whichever occurs first. A permanent GSE Patch would allow credit unions to continue to provide vital credit to members. Continued and robust participation in the secondary mortgage market is essential to preserving the safety and soundness of the credit union industry.

The GSE Patch allows for the use of the GSEs' underwriting standards and does not establish a DTI threshold. Credit unions frequently sell a sizeable portion of their loan portfolios to the GSEs. According to NAFCU's 2018 *Federal Reserve Meeting Survey*, 32.4 percent of members sell to either Fannie Mae or Freddie Mac, and 22.5 percent sell to both GSEs. Additionally, respondents reported that 59 percent of their outstanding first mortgage loans qualified to be sold to the GSEs. As demonstrated in the chart below, credit unions sell a much greater share of their loans to Fannie Mae now (40 percent) compared to before the financial crisis (under 30 percent). Fannie Mae is credit unions' most important access point to the secondary market.



*Includes other depositories, mortgage banks, life insurance companies, affiliate institutions, and other types of purchasers
Figures include all sales in a given year, regardless of year originated
Source: FFIEC (HMDA)

The chart below indicates that of all mortgages sold, credit unions have increased the share sold to Fannie Mae and Freddie Mac from 41 percent in 2007 to 50 percent in 2017. Some may allege that trends like this are due to the GSEs' competitive advantage as a result of the GSE Patch; however, credit unions utilize the GSEs as their primary means of accessing the secondary market and a valuable source of liquidity. The GSEs' sophisticated underwriting technologies are also a critical tool for credit unions of all sizes.



*Includes banks, mortgage banks, credit unions finance or life insurance companies, affiliate institutions, and other types of purchasers
Source: FFIEC

As the Bureau recognized in the 2019 ATR/QM Rule Assessment Report, the percentage of GSE insured loans has not decreased as previously expected. The assessment attributed this to several reasons including, compliance certainty, flexibility, and robust secondary market liquidity. Although intended to be temporary, the GSE Patch has preserved access to credit and solidifying it as a permanent category or installing a similar alternative would continue to provide access.

As evidenced by the Bureau's data and the fact that the amount of GSE insured loans has not decreased, the expiration of the GSE Patch may have adverse effects on credit unions. Adverse effects could include a reduction of mortgage originations, hurting members and the local communities in which they live and work; only further increasing racial and socioeconomic disparities across the country. Some credit unions report that they have not yet moved away from originating loans under the GSE Patch. This is due, in part, to the substantial operational burden in updating underwriting systems. In addition, some credit unions have not yet moved to originating only General QM loans because the members they serve do not meet the threshold required. Expiration of the GSE Patch would greatly affect those credit unions who have not yet started to originate General QM loans. Accordingly, should the Bureau decide to allow the GSE Patch to expire, NAFCU requests the Bureau work diligently before the expiration to find an alternative that ensures credit unions can continue to provide underserved communities with the ability to achieve homeownership.

NAFCU requests an extension of the GSE Patch as the Bureau contemplates this proposal to revise the definition of the General QM and finds a viable alternative to the GSE Patch that works for credit unions and their members. Absent an extension, the market may see a reduction in sales to the GSEs, as credit unions may hold more mortgages in their portfolios. More importantly, credit unions will need sufficient time to adjust compliance efforts and operating systems to account for revisions to the General QM definition. Given that the amount of GSE-insured loans has not decreased, failing to extend the patch affects a large segment of the mortgage industry.

The Bureau should revise the General QM category of loans to provide an alternative to the GSE Patch

Increased DTI Threshold and Compensating Factors

In general, NAFCU members want an alternative approach to determine a borrower's ATR other than the current DTI threshold. An ATR analysis is an important tool for borrowers, lenders, and the mortgage industry as a whole. The current DTI threshold of 43 percent is an arbitrary indicator of a borrower's ATR, and revisions to the definition are necessary to allow credit unions to better serve their members. Regardless, an ATR assessment should retain a direct measure of a consumer's personal finances, as a sound underwriting practice. Historically, credit unions have had strong underwriting standards as demonstrated by the quality of loans originated during the financial recession. However, the General QM makes it substantially more difficult for credit unions to help the members most in need of access to credit, including those in underserved areas. At the outset, any alternative approach adopted by the Bureau will require credit unions to adopt new policies and procedures to implement, as well as updates to their operating systems. Increased costs will be associated with any changes to the definition of a General QM.

Revisions to the General QM definition should provide an alternative to the GSE Patch. NAFCU suggests an increase to the current DTI threshold, and allowance for compensating factors. An increased DTI threshold would allow credit unions to continue serving their members, and provide the same benefits and protections to credit unions afforded by the GSE Patch. This alternative would also allow for innovation in the development of competitive private-sector approaches. Historically, NAFCU has suggested a DTI threshold on par with that of Fannie Mae. Fannie Mae allows a DTI threshold up to 50 percent in certain circumstances. Between Fannie Mae and Freddie Mac, credit unions sell the majority of their mortgages to Fannie Mae. Therefore, in the absence of the GSE Patch, the DTI threshold should be adjusted to Fannie Mae's DTI threshold. Regardless of what threshold is set, an increased standard will allow credit unions greater flexibility to serve low- and moderate-income members.

If the Bureau adopts an increased threshold, then NAFCU suggests that compensating factors be in place up to a certain level of DTI, such as allowances for lower loan to value (LTV) ratios, and verifiable assets. In addition, residual income should be allowed as a compensating factor. In practice, compensating factors are utilized for exceptions to underwriting standards. Allowing compensating factors will assist members with higher DTIs, but who still have the means to repay, with obtaining a mortgage loan. Additionally, compensating factors mitigate risks for high-DTI borrowers.

As the Bureau noted in the ANPR, a borrower's residual income could be an alternative to a DTI analysis. NAFCU suggests that residual income be a compensating factor and not an alternative to a DTI analysis. In certain circumstances, residual income can be more of a direct measure of a borrower's ATR. For instance, a high-earning consumer may have a high DTI threshold over 43 percent, but sufficient disposable income to repay the mortgage. Such consumers include those who have high-paying jobs but high student debt. With Americans owing $1.5 trillion in student loans, we will continue to see consumers with high DTIs, but enough residual income to repay a mortgage. In addition, a residual income standard may assist in capturing a better picture of a consumer's ATR for those gig economy workers, or those who have alternative work arrangements.

However, there are complexities in calculating residual income. Moreover, utilizing residual income to determine a borrower's ATR may be difficult to automate. Processes that cannot be automated or are difficult to automate cause severe burdens on credit unions. Less automation slows down the mortgage origination process as more manual work is involved; hindering the member experience and reducing credit unions' ability to continue make the same quantity of loans. This is especially true for smaller credit unions that do not have the level of compliance and lending resources as larger institutions. In addition, a stand-alone DTI analysis is not necessarily an indication of default rate. As evidenced in the Bureau's ATR/QM Assessment Rule Report, the early delinquency rates for GSE and non-GSE loans with DTIs between 44 and 45 were higher than the delinquency rates for GSE and non-GSE loans with DTIs between 46 and 50. Accordingly, NAFCU suggests that the Bureau allow residual income as a compensating factor to an increased DTI threshold.

The Bureau also contemplates removal of the DTI threshold in the ANPR; however, removal would effectively make the new safe harbor category allowed by the *Economic Growth, Regulatory Relief and Consumer Protection Act* (EGRRCPA) worthless. Section 101 of the EGRRCPA added a new safe harbor category of QM to TILA for mortgages originated and retained in portfolio by insured credit unions with less than $10 billion in assets that meet certain criteria. This section of the EGRRCPA codifies a version of the small creditor portfolio QM category and allows credit unions expanded flexibility with respect to making QM loans. If the Bureau removes the DTI threshold, then larger lenders may have a competitive advantage and the risk of those lenders targeting riskier borrowers increases. Credit unions do not seek to exploit their members in order to make a profit, nor do they answer to shareholders. Instead, credit unions seek to provide affordable mortgages for their members. This notion may not be true for other lenders in the mortgage industry. This section recognizes the unique structure of credit unions and provides the flexibility needed to effectively assist members. Thus, the safe harbor category should be preserved by not removing the DTI threshold altogether.

Points and Fees Threshold

The Bureau should revise the points and fees threshold, as the current calculations are confusing and unnecessarily complex hindering credit unions' ability to make loans. As the Bureau noted in the 2019 ATR/QM Rule Assessment Report, small lenders – like credit unions – report waiving fees in order to comply with the rule. Currently, the rule provides that a QM cannot have the sum of points and fees exceed three percent of the loan amount. This threshold is particularly challenging to maintain for smaller loan amounts. According to NAFCU's January 2019 *Economic & CU Monitor Survey*, 40 percent of respondents ranked the following three items as providing the greatest benefit if excluded from the points and fees calculation: (1) affiliate title charges; (2) loan level price adjustments; and (3) lender-paid compensation to a corresponding bank, credit union, or mortgage broker.

Inclusion of affiliate fees hinders the ability of credit unions to find cost savings for their members, and unfortunately leads to costs passed onto members. Recognizing the high affiliate fees, credit unions have formed credit union service organizations (CUSOs) to assist with the titling process. Providing this service ultimately reduces costs for members. NAFCU requests the Bureau remove these items from from the calculation to reduce complexity and confusion. Alternatively, the Bureau should consider revising the points and fees threshold to a tiered structure based on the total loan amount. Under the tiered structure, loans meeting a certain threshold would be allowed higher points and fees. Regardless of loan size, lenders have fixed costs, and a tiered structure would disincentivize lenders from shying away from financing smaller loans. A tiered points and fees structure would alleviate issues that arise when smaller loans are made, and assist in lending to underserved markets.

Implementation Period

Credit unions need a reasonable amount of time to change current practices following any revisions to the General QM definition. Credit unions have been operating under the current regime for nearly a decade and there will be expenses incurred in updating systems, policies, and procedures. Extension of the GSE Patch until any revisions are finalized should be provided. NAFCU recommends a period of 18-24 months, to allow for proper implementation. At minimum, the Bureau should provide 18 months, as systems updated may be dependent upon third-party vendors. Credit unions need sufficient time to work with vendors to develop, test, and install new software systems. In addition, adequate time to train staff members on new requirements is necessary as well as time to educate members on product offerings.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. Should the Bureau decide to allow the GSE Patch to expire, NAFCU urges the adoption of an alternative approach to measuring DTI that provides credit unions with similar protections and benefits. To ease the transition and mitigate market disruptions, an extension of the GSE Patch is necessary until finalization of the revised General QM definition. NAFCU supports revisions to the General QM definition, but the Bureau should continue to research alternatives to the DTI threshold, and revise the points and fees threshold. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,

Kaley Schafer
Regulatory Affairs Counsel