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National Association of Federally-Insured Credit Unions

September 30, 2020

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): Seasoned QM Loan Definition (RIN 3170-AA98)

Dear Sir or Madam:

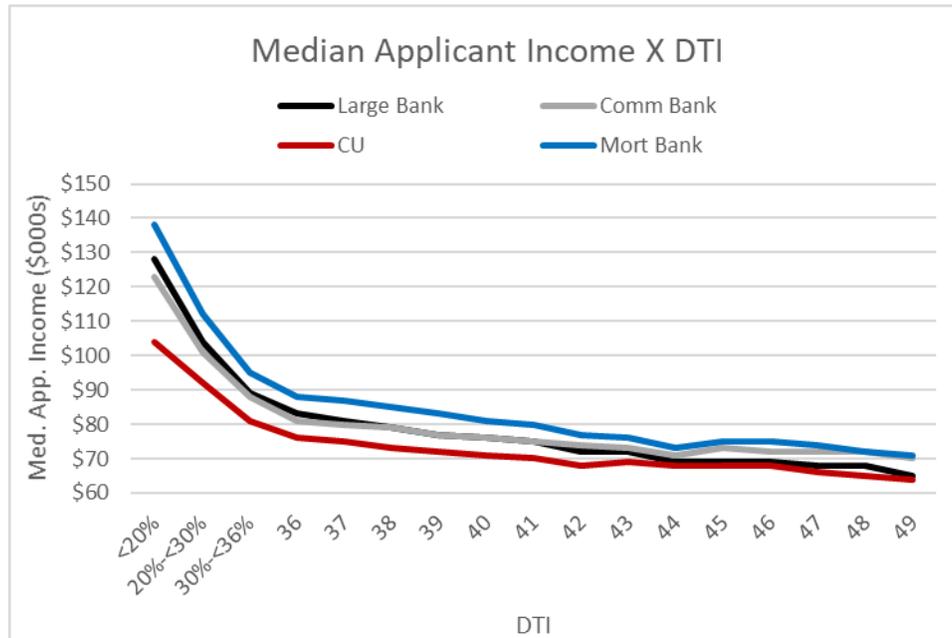
On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) notice of proposed rulemaking regarding the Seasoned Qualified Mortgage (QM) definition under the *Truth in Lending Act* (TILA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 121 million consumers with personal and small business financial service products. NAFCU applauds the Bureau's proposed Seasoned QM definition as an alternative pathway for credit unions to gain QM safe harbor status. A Seasoned QM definition would increase access to credit and allow credit unions to serve some members previously served by the Temporary government-sponsored enterprises (GSE) QM loan (Temporary GSE Loan or GSE Patch), but it is not a replacement for the GSE Patch as it does not afford the same legal protections at origination. NAFCU continues to urge the Bureau to extend the GSE Patch to at least 18 months after the finalization of this rule to allow for a transition period. NAFCU generally supports this proposed rule as the Seasoned QM definition would enhance access to credit for low- to moderate-income borrowers and underserved markets with the requisite ability-to-repay (ATR) and mitigate negative impacts posed by the General QM proposal. However, NAFCU suggests that the Bureau consider revising the allowable number of 30-day delinquencies during the seasoning period as variance to the number will have minimal impacts on the amounts of loans that will season.

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 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. Presumably, QM loans have a lower default risk.

According to TILA, the Bureau has the authority to prescribe regulations that revise or add to the criteria that define a QM upon a finding that regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent and necessary to effectuate the purpose of TILA. NAFCU supports the Bureau's use of this authority to prescribe regulations adding a Seasoned QM definition and agrees that it is necessary and proper to ensure responsible and affordable mortgage credit remains after the GSE Patch sunsets.

As the GSE Patch is set to expire and regardless of any possible extension to the sunset date, NAFCU has long advocated for a viable alternative to continue to serve members. 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 help them achieve homeownership. According to 2019 *Home Mortgage Disclosure Act* (HMDA) data, credit unions provide more lending to low- and moderate- income earners at every DTI level. Thus, highlighting the importance of the GSE Patch and an alternative that allows continued service to these borrowers.



Source: 2019 HMDA Loan Level Data

Expiration of the GSE Patch, without the adoption of a viable alternative may have adverse effects on credit unions. Adverse effects could include a reduction of mortgage originations, which would hurt members and the local communities in which they live and work. Such an effect would only further increase 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 existing threshold required. Expiration of the GSE Patch would greatly affect those credit unions who have not yet started to originate General QM loans, especially as the COVID-19 pandemic has likely put regulatory changes on the back burner for many credit unions.

The proposed Seasoned QM definition would serve as an alternative path for borrowers previously served by the GSE Patch and alleviate some of the concerns of expiration.

NAFCU generally supports the Seasoned QM definition as it reduces negative impacts posed by the proposed General QM definition

In general, NAFCU supports the Seasoned QM definition as it mitigates some of the negative impacts posed by the proposed General QM definition, although it is not a complete substitute for the GSE Patch. NAFCU reiterates its concerns with the proposed General QM definition, including the risk that a pricing threshold may lead to mispriced loans that result in disproportionate impacts on low- to moderate-income borrowers. This is an issue NAFCU raised in our August 10, 2020 comment letter on the proposed GSE Patch extension and in our September 4, 2020 comment letter on the proposed General QM definition. As indicated earlier, credit unions provide more lending to low- and moderate-income borrowers at every DTI level, necessitating an alternative to the GSE Patch. According to NAFCU's July 2020 *Economic & CU Monitor* survey, credit unions report that on average, 68 percent of their portfolios are QMs, illustrating credit unions' use of the GSE Patch and non-QM lending. If the Bureau adopts the General QM definition as proposed, and the GSE Patch expires without an alternative, the level of non-QM lending could be severely hampered.

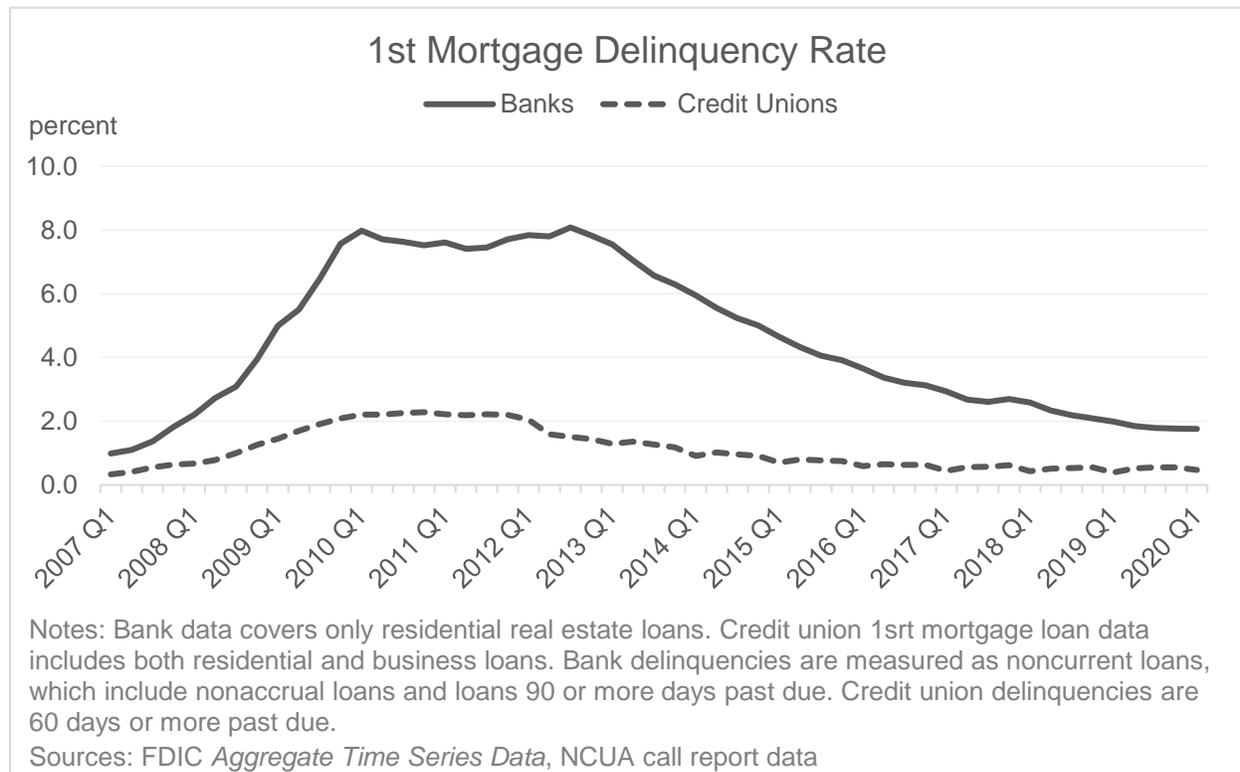
A Seasoned QM definition alleviates some of the concern of a contracting non-QM market and provides access to borrowers that could be shut out if this definition were not adopted. Seasoned QMs gain conclusive safe harbor status upon meeting the performance and portfolio requirements, which may incentivize responsible non-QM lending. A more robust non-QM market will lead to increased consumer choice and lower costs for borrowers. Although the Seasoned QM may incentivize some non-QM lending, the risk of litigation remains. Unlike the GSE Patch, a Seasoned QM does not gain safe harbor status at origination, which will leave some credit unions hesitant to offer this type of QM. A Seasoned QM loan does not alleviate the biggest obstacle to originating non-QM loans, which is unknown liability that could result in a complete loss to the credit union. Borrowers may still bring a private right of action against a credit union in violation of the ATR requirements. Section 130(e) of TILA provides that the statute of limitations is three years for a borrower to bring a claim, thus a borrower may bring a claim during the seasoning period. Credit unions have experienced non-QM borrowers that ultimately end up in foreclosure being approached by exploitive plaintiffs' attorneys attempting to bring an ATR/QM violation. So long as this litigation risk remains, despite the borrower having the requisite ATR based on prudent underwriting practices, lenders will be less willing to provide Seasoned QM loans minimizing the Bureau's goal of enhancing the non-QM market.

NAFCU has long advocated for a viable GSE Patch alternative that affords the same legal protections and assurances for lenders as the GSE Patch. A Seasoned QM definition is not a complete replacement of the GSE Patch but is an alternative pathway to attaining QM status and mitigates some of the negative impacts posed by the proposed General QM definition. NAFCU encourages the Bureau to utilize their broad authority under TILA to provide a viable replacement for the GSE Patch.

The Bureau should consider revising the performance requirements for Seasoned QM loans

NAFCU agrees that limited delinquencies coupled with the product restrictions and continuance of underwriting requirements provide sufficient certainty of ATR compliance. Under the proposal, the Seasoned QM definition must have no more than two 30-day delinquencies and no 60-day delinquencies, unless there is a “qualifying change” in connection with a disaster or pandemic-related national emergency. Inclusion of the exception for a disaster or pandemic-related national emergency is particularly helpful as we have experienced first-hand the unique challenges that arise in such a scenario with the impacts of the COVID-19 pandemic this year. This language allows credit unions to adapt when a qualifying change occurs and minimizes any lag time from the agency in response to a disaster or pandemic-related emergency. This allows credit unions to focus even more on helping their members in need during a natural disaster or pandemic.

NAFCU suggests that the Bureau revise the performance requirements to allow for more than two 30-day delinquencies during the seasoning period. Historically, credit unions have had low delinquency rates, even during the Great Recession. Credit union delinquencies have remained steady for several years and at a pre-recession level. Adoption of a Seasoned QM definition will not likely increase credit union delinquencies given the continued practice of prudent underwriting. The proposal requires lenders to consider and verify a borrower’s ATR which protects the consumer from entering into an unaffordable mortgage and decreases the chance of default.



As the Bureau is aware, a safe harbor at origination does not necessarily result in zero risk of default as borrowers may default at any time due to unforeseen circumstances. According to the Bureau's analysis of performance alternatives there is minimal difference between the percentage of potentially seasonable loans that would satisfy the performance requirements if the seasoning period allowed additional 30-day delinquencies. Assuming adoption of the General QM definition as proposed, the percentage of seasonable QM loans with two 30-day delinquencies is 71.3 percent, 71.7 percent for three delinquencies, and 72.2 percent for four delinquencies. Assuming the General QM definition remains the same and the GSE Patch expires, the percentage of seasonable QM loans with two or three 30-day delinquencies is 84.6 percent and 84.8 percent for four delinquencies.

As the Bureau notes, allowing alternatives to the proposed two, 30-day delinquencies have modest effects on the number of loans that would season. Variances to the length of the seasoning period result in more dramatic decreases. Due to the dramatic results, the Bureau should not change the length of the seasoning period at this time, nor should a rebuttable presumption Seasoned QM be adopted with a further seasoning period. Because of the modest effects on the number of loans that would season, NAFCU supports variances to the number of 30-day delinquencies to allow additional flexibility during the seasoning period, without dramatically decreasing the possibility of qualifying as a Seasoned QM. NAFCU suggests the Bureau adopt either three or four 30-day delinquencies during the seasoning period.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU supports the adoption of a Seasoned QM definition as an alternative pathway to seek safe harbor status and an alternative to the GSE Patch. However, NAFCU encourages the Bureau to utilize their broad authority under TILA to provide a viable replacement for the GSE Patch affording the same legal protections. In addition, NAFCU suggests that the Bureau consider revising the number of allowable delinquencies during the seasoning period to three or four since minimal impacts will occur. 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
Senior Regulatory Affairs Counsel