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National Association of Federally-Insured Credit Unions

September 4, 2020

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

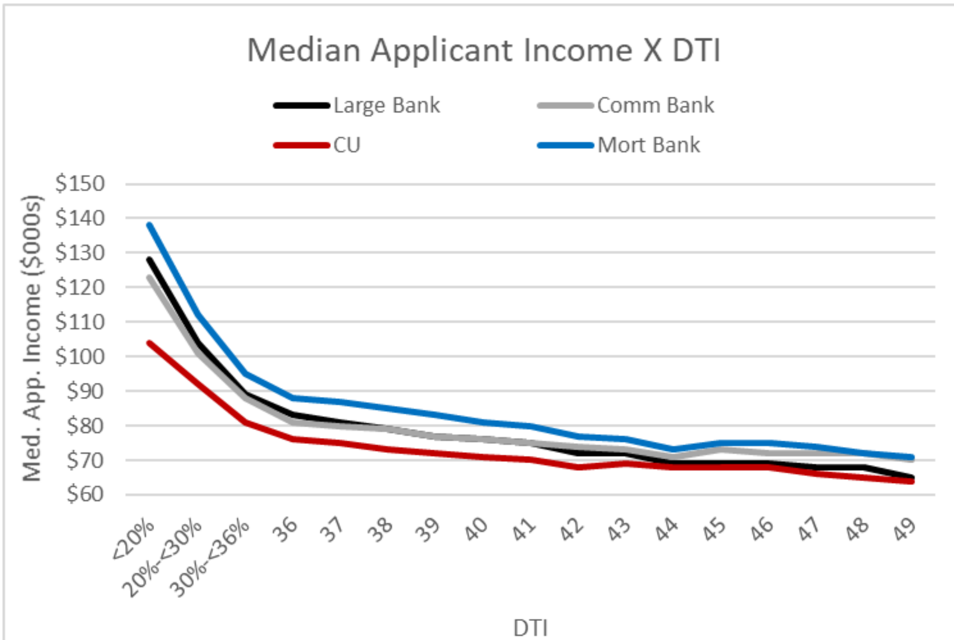
RE: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition (RIN 3170-AA98)

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 General 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 appreciates the Bureau's consideration to revise the definition of a General QM considering the expiration of the Temporary Government-Sponsored Enterprises (GSE) QM loan (Temporary GSE loan or GSE Patch), to ensure access to credit. NAFCU and its member credit unions ask that the Bureau adopt a General QM definition with a modified debt-to-income (DTI) threshold and allowance for compensating factors. If the Bureau adopts a pricing threshold such as the average prime offer rate (APOR), then NAFCU asks that the Bureau increase the safe harbor QM threshold to at least 200 basis points over APOR, evaluate whether an increase to the Rebuttable Presumption QM threshold is warranted, and increase the smaller loan pricing threshold to minimize any detriment to manufactured housing loans.

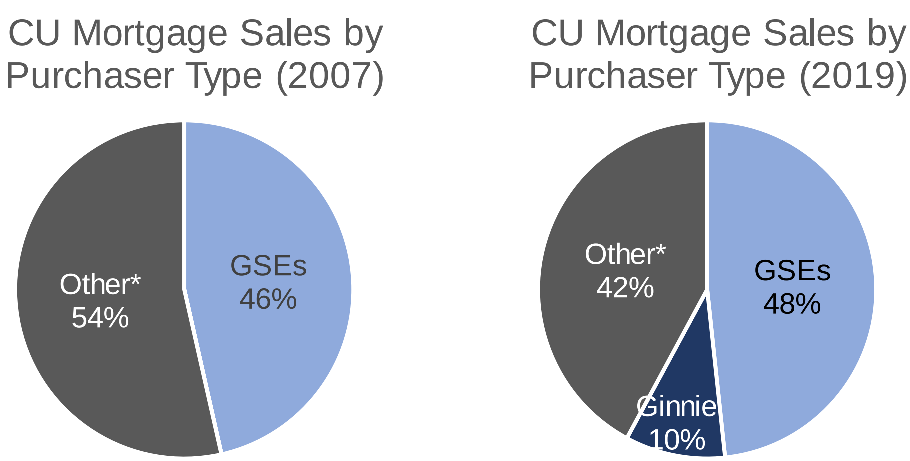
General Comments

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. Presumably, QM loans are to have a lower default risk. 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 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 a GSE Patch alternative that allows credit unions to continue to serve these borrowers. NAFCU appreciates the Bureau's separate proposal regarding a seasoned QM definition as this will likely assist initially high DTI loans for reasonable borrowers with the requisite ATR gain QM status.



Source: 2019 HMDA Loan Level Data

Moreover, credit unions frequently sell a sizeable portion of their loan portfolios to the GSEs to free up capital and continue to provide lending to members. According to 2019 HMDA data, credit unions sold 36 percent of their loans to the GSEs. It is important to note that HMDA data does not



*Includes other depositories, mortgage banks, life insurance companies, affiliate institutions, and other types of purchase

Source: FFIEC, CFPB

include every credit union, as the HMDA dataset reflects only 1,600 credit unions total. In 2019, the GSEs purchased more credit union loan than any other type of purchaser. Between the GSEs, credit unions sell to Fannie Mae more frequently, and sales have remained consistent since 2007. As noted by the Bureau in this proposal and the 2019 ATR/QM Rule Assessment Report, the percentage of GSE insured loans has not decreased, contrary to the agency's expectations. 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 alternative QM definitions adopted must continue to provide access.

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 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. Accordingly, NAFCU requests that the Bureau find an alternative to the GSE Patch that ensures credit unions can continue to provide underserved communities with the ability to achieve homeownership.

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

Consideration and Verification Requirements

Dodd-Frank tasked the Bureau with promulgating regulations for determining a borrower's ATR, and this analysis remains an important tool for borrowers, lenders, and the mortgage industry. As a metric for performance, DTI is not the sole determining factor and NAFCU appreciates the Bureau's emphasis in the proposal providing creditors latitude in how factors are looked at and the allowance for credit unions to establish their own DTI thresholds and corresponding compensating factor exceptions. Credit unions are responsible lenders that do not place their members in mortgages they cannot afford. Therefore, at this time, NAFCU does not suggest that the Bureau explicitly enumerate compensating factors a lender may use to consider ATR. Prescriptive requirements will likely lead to a restriction of credit, and inflexible parameters may not accurately reflect a borrower's ATR.

NAFCU agrees with the removal of Appendix Q, as it is outdated, inflexible, and ambiguous as the Bureau suggests. Removal of Appendix Q and the inclusion of requirements within the regulations themselves will ease compliance. According to NAFCU's July 2020 *Economic & CU Monitor Survey*, over 48 percent of respondents stated that removal of Appendix Q would ease compliance. Despite the support for removal of Appendix Q, the Bureau should retain it on their website for lenders to utilize for verification requirements, if they so choose. This allows more flexibility for lenders. NAFCU appreciates the Bureau's proposed safe harbor of verification standards, so long as lenders use one of the standards provided by the Bureau. As proposed, the safe harbor allows credit unions flexibility and affords a guarantee of compliance requirements. To afford greater flexibility, the Bureau should allow the mixing and matching of verification standards, without the risk of losing safe harbor status, and should allot for changes to those standards that are substantially similar. Above all else, the Bureau needs to ensure that the consideration and verification requirements written into the regulations are clear and unambiguous so that credit unions understand the requirements and may avail themselves of the proposed verification standards safe harbor.

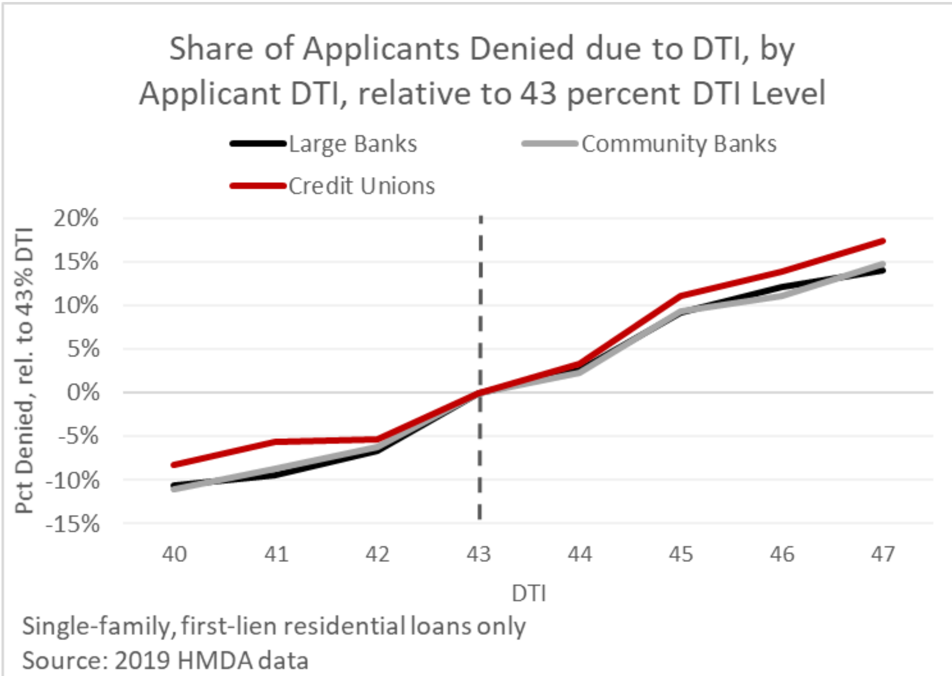
Modified DTI Threshold and Compensating Factors

NAFCU reiterates that the best course of action is to amend the General QM definition by adopting a modified 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.

NAFCU reiterates the need to increase the current DTI threshold, and allow for compensating factors. According to NAFCU's July 2020 *Economic & CU Monitor* survey, respondents ranked their preferences of QM definition options, with 46 percent of respondents ranking their first choice as a modified DTI of 43 percent, followed by 62 percent of respondents ranking their second choice as a modified DTI of 48 percent tied with a safe harbor pricing threshold of 200 basis points over APOR. 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. Considering credit unions sell the majority of their mortgages to Fannie Mae, in the absence of the GSE Patch, the DTI threshold should be adjusted to Fannie Mae's DTI threshold of 50 percent. Regardless of what threshold is set, an increased standard will allow credit unions greater flexibility to serve low- and moderate-income members. 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.

According to 2019 HMDA data, the number of loan denials begins to increase once a borrower hits the DTI threshold of 43 percent., across all lender types. This indicates that the current DTI threshold may be stifling lending. Raising the DTI threshold will likely result in fewer loan denials based on DTI alone when a borrower's ATR is sufficient to repay the loan.



In addition, 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. The Bureau should not set prescriptive parameters on compensating factors and should afford credit unions flexibility. In practice, compensating factors are utilized as exceptions to underwriting standards. Allowing compensating factors will assist members with higher DTIs, but who still have the means to repay a mortgage loan, obtain access to credit. Additionally, compensating factors mitigate risks for high-DTI borrowers.

NAFCU again suggests that residual income be an optional compensating factor for high-DTI borrowers, but residual income should not be a substitute for a DTI determination, as proposed. 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. However, given the complexities in calculating residual income and difficulty in automating residual income, it is best left as a compensating factor for a high-DTI exception. Utilizing residual income to determine a borrower's ATR may be difficult to automate; and processes that cannot be 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 making 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. Additionally, more automation assists credit unions in ensure regulatory compliance.

Increased Pricing Thresholds

Although it is NAFCU's preference to have a General QM definition based on a modified DTI threshold, if the Bureau ultimately adopts a pricing method, then the thresholds must be adjusted. At first glance, the proposal appears to provide flexibility for lenders when compared to the rigid 43 percent DTI cap, but flexibility should not override the associated risks. The Bureau uses APOR as a proxy for a borrower's ATR; however, price is a good indicator of default risk but not necessarily a borrower's ATR. In addition, the pricing method does not address potential risks such as market shifts, the mispricing of loans, and the propensity for this method to lead to a disparity between the conventional and Federal Housing Administration (FHA) markets. NAFCU recommends that the Bureau adjust the safe harbor QM pricing threshold from 150 basis points to 200 basis points over APOR, to minimize adverse impacts on credit unions, and evaluate whether the threshold for a rebuttable presumption QM should be increased as well. As the Bureau noted in the proposal, NAFCU agrees that setting a safe harbor QM over 150 basis points over APOR, will likely not have any adverse effect on access to credit.

Additionally, NAFCU suggests an increase to the pricing threshold set for smaller loan amounts less than $109,898 to mitigate negative impacts on manufactured housing lending. Manufactured housing is a key affordable housing option for consumers and most credit unions loans fall below this dollar threshold. As other lenders have begun to reduce this offering in the past few years, credit unions continue to provide the same share of manufactured housing loans. Credit unions' share of manufactured home loans has remained consistent over the past five years, while large bank and community lenders have decreased lending by close to 10 percent. As large lenders decrease manufactured home lending, the proposed pricing threshold may exacerbate consumer difficulties in obtaining a loan. NAFCU members expect the proposed pricing thresholds to negatively impact a large portion of their manufactured housing portfolios, some report up to 90 percent of existing loans will no longer be deemed a QM under the stated thresholds. To avoid a negative effect on manufactured housing lending, the Bureau should consider increasing the proposed pricing threshold to ensure manufactured housing loans receive equivalent treatment under existing conditions.

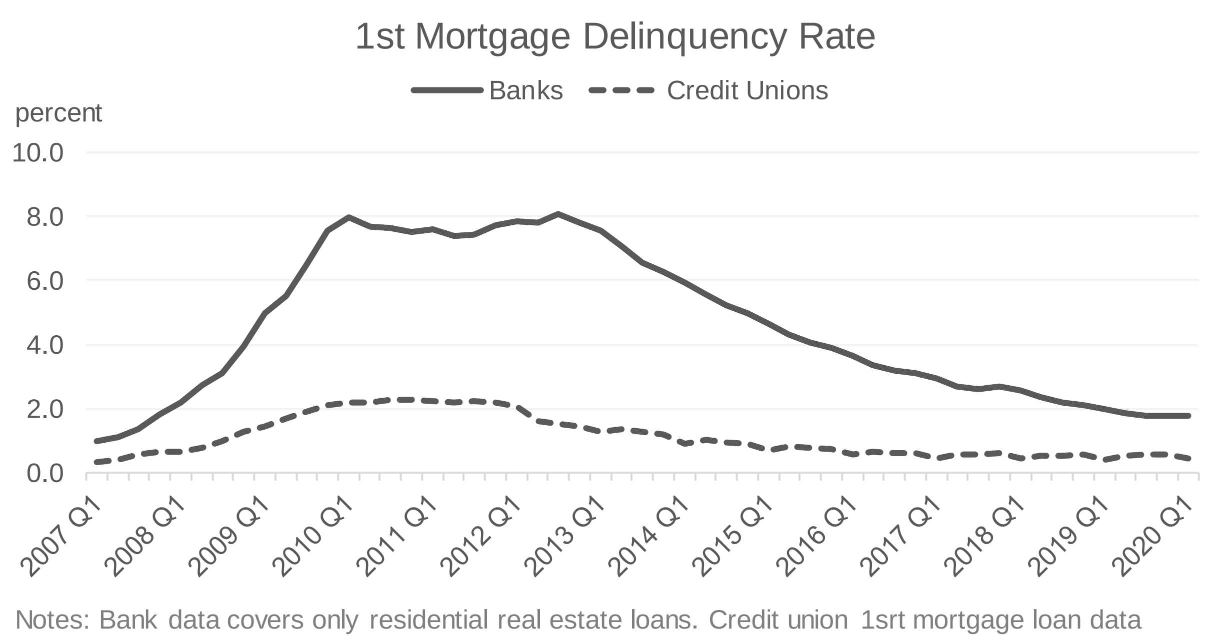
Share of Total Manufactured Home Loans, by Lender Type

Lender Type	2014	2015	2016	2017	2018	2019
Large Banks	22.4	19.4	17.0	15.9	12.3	12.3
Community Banks	25.1	23.5	22.7	20.1	17.1	16.4
Credit Unions	10.1	10.5	9.9	9.8	10.5	10.6
Affiliates	2.0	2.3	3.4	1.6	1.3	1.7
Ind. Mortgage Lenders	40.4	44.3	47.1	52.6	58.8	59.1

Source: 2019 HMDA data

This rulemaking could result in a significant change to the General QM definition, and lenders need to be comfortable with implementation and any impacts of the proposed changes. NAFCU suggests a higher safe harbor QM threshold to avoid any adverse impacts to credit union portfolios. According to NAFCU's July 2020 *Economic & CU Monitor* survey, only 37 percent of respondents reported that they anticipate originating the same amount of QM loans, if the Bureau adopts the General QM definition as proposed. While NAFCU remains concerned about the effects of existing credit union portfolios due to a pricing threshold as the definition of a General QM, credit unions continue to have concerns about future originations and the uncertainty of longer-term impacts.

A price of a loan is tied to several factors and may not depend solely on the borrower's ATR. Instead, price may depend on the market, economic factors, and other risks to the lender. Moreover, the interest rate of a loan may not be as predictive of default risk given various economic scenarios. In a distressed market, like we are currently facing and may be for some time, according to economic forecasts, an interest rate as a predictor of early delinquency is not sufficient to account for risk. Credit unions have historically low first-mortgage delinquency rates, and lending standards across the entire mortgage industry have tightened in the aftermath of the Great Recession. As responsible lenders, credit unions do not want to place their members in mortgages that they cannot afford and want to avoid member delinquencies and foreclosures. As shown below, the rate of credit union delinquencies has been historically low, both prior to and during the recession. It is unclear how a pricing method will impact delinquency rates.



Notes: Bank data covers only residential real estate loans. Credit union 1srt mortgage loan data includes both residential and business loans. Bank delinquencies are measured as noncurrent loans, which include nonaccrual loans and loans 90 or more days past due. Credit union delinquencies are 60 days or more past due.

Sources: FDIC *Aggregate Time Series Data*, NCUA call report data

As the Bureau acknowledged, the pricing threshold does not consider the potential for mispricing of loans. The proposed 150 basis points may lead lenders to push rates lower in order for loans to gain QM status, thus actually making it more difficult for certain borrowers to obtain a loan including first-time home buyers, low- to -moderate income earners, and other underserved communities. In addition, the APOR pricing method will lead to shrinking rate spreads and creates a market with fewer higher interest rate bands, thus forcing borrowers to pay higher down payments because the lender does not have a price offering that fully allows the lender to capture the riskiness of lending to certain borrowers.

Moreover, the proposed APOR method is calculated differently between the conventional and FHA markets, which create an unlevel playing field. Borrowers that are unable to obtain a loan from a credit union given the pricing thresholds may to pushed into the FHA market, leaving them with considerably fewer options. Limited consumer choice may lead to increased costs to the borrower, and may disproportionately impact certain communities, exacerbating socioeconomic disparities in the housing market. Moreover, the FHA is ill-equipped to handle a large influx of mortgages due to its antiquated technology. Although the agency is working to update its legacy systems, ultimately slower processes hinder borrowers. The FHA needs to have the correct infrastructure in place to handle the volume of loans, should a pricing threshold be adopted.

Hybrid Approach

NAFCU appreciates the Bureau's willingness to evaluate alternative approaches to the proposed pricing method, such as the adoption of a hybrid approach. Maintaining guardrails to ensure a borrower's ATR, is key in carrying out the intent of TILA. Although the Bureau suggests that a hybrid approach may be the accurate model in terms of evaluating a borrower's ATR, the complexity in adopting such an approach is worrisome. Implementation and the impacts of a hybrid approach are difficult to identify. NAFCU does not support a hybrid approach at this time given the complex nature of the proposed thresholds and DTI caps, and encourages the Bureau to continue to evaluate this method as an alternative to the General QM definition.

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 some time and there will be expenses incurred in updating systems, policies, and procedures. NAFCU appreciate the Bureau's willingness to extend the GSE Patch to avoid market disruptions due to the finalization of this rulemaking. NAFCU recommends a period of 18-24 months, to allow for proper implementation. NAFCU has separately recommended this implementation period in response to the Bureau's separate notice of proposed rulemaking regarding the extension of the GSE Patch. 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. NAFCU urges the adoption of an alternative approach to measuring DTI that provides credit unions with similar protections and benefits. NAFCU supports revisions to the General QM definition in light of the expiration of the GSE Patch and suggests a modified DTI threshold. However, if the Bureau adopts a pricing method, then the thresholds should increase to minimize any adverse impacts on credit union portfolios and to ensure that higher risk borrowers can be accounted for. 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