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National Association of Federally-Insured Credit Unions

April 2, 2021

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; Delay of Mandatory Compliance Date (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 to extend the mandatory compliance date of 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 124 million consumers with personal and small business financial service products. NAFCU appreciates the Bureau's responsiveness to monitoring the market in determining the necessity of a delay of the mandatory compliance date. NAFCU supports the 15-month delay of the General QM definition as it allows credit unions more time to implement the Bureau's final rulemakings and provides flexibility to serve members as the COVID-19 pandemic continues. This delay includes the extension of the Temporary Government-Sponsored Enterprises (GSE) QM loan (Temporary GSE loan or GSE Patch). NAFCU requests the Bureau continue to monitor the market and work with the Federal Housing Finance Agency (FHFA) regarding the sunset date of the GSE Patch. Further, NAFCU encourages the Bureau to work towards a viable alternative to the GSE Patch during the extension period.

NAFCU Supports the 15-Month Delay as it Provides Additional Flexibility

NAFCU is supportive of the 15-month delay of the General QM definition mandatory compliance date as it allows additional flexibility for credit unions and the ability to serve members during the COVID-19 pandemic. Due to the pandemic, credit unions have made every effort to assist their members to cope with economic uncertainties. These efforts include offering forbearances and loan modifications, waiving fees, and offering low or no-interest loans. Credit unions re-allocated staff to provide emergency loans and ensure members and small businesses in their communities had access to credit. Credit unions made these efforts while simultaneously meeting market demands. Allowing a delay of the mandatory compliance date affords more time to prioritize assisting members first and gradually adjusting to regulatory changes.

During the rulemaking process, NAFCU urged the Bureau to adopt a reasonable implementation period so that credit unions had ample time to change their current practices to adhere to the final rule. Ultimately, NAFCU suggested a period of 18-24 months to allow for proper implementation for credit unions to work with vendors on developing, testing, and installing new software systems, training staff members, updating policies and procedures, and educating members on product offerings. A mandatory compliance date of October 1, 2022 provides a timeframe that is more in line with what our membership sought during the rulemaking process. The Bureau's final General QM definition adopts an average prime offer rate (APOR)-based definition resulting in a significant change from the regime credit unions have been operating under since implementation of the ability-to-repay (ATR)/QM rule. NAFCU has expressed opposition to the APOR-based definition and urges the Bureau to adopt a modified DTI with compensating factors as the agency may reconsider the definition in the future; however, if after reconsideration the Bureau continues to adopt the final APOR-based definition, then the 15-month delay is appropriate. A 15-month delay allows for more time to implement the changes made by the final General QM and Seasoned QM definitions. Moreover, credit unions continue to make every effort to serve their members during the COVID-19 pandemic and the additional flexibility allows them to do so.

The proposal allows credit unions the option to utilize the new APOR-based QM definition, the previous debt-to-income (DTI)-based General QM definition, and offers the continued use of the GSE Patch. Although not part of this proposal, credit unions may also choose to adopt the Seasoned QM definition early. As the Bureau correctly noted, the additional flexibility will assist borrowers who may not have been otherwise able to obtain a mortgage loan under the APOR-based General QM definition due to the current lending environment and impacts stemming from the COVID-19 pandemic. As the Bureau acknowledged in both this proposed delay and the proposed General QM rule, the APOR-based General QM definition does not consider the potential for the mispricing of loans. The Bureau reiterated that given the current market conditions and high-volume of mortgage origination, there is concern that the APOR approach may create an incentive to misprice loans and increase rate spreads for higher-risk borrowers. NAFCU has consistently advocated for ensuring access to responsible and affordable mortgage credit and appreciates the additional flexibilities for General QM definitions so that higher risk but otherwise creditworthy borrowers can still gain access to affordable mortgage credit. Additionally, the delay disincentivizes any mispricing of loans. Again, NAFCU urges the Bureau to oppose the APOR approach when reconsidering the rule given the possibility for mispriced loans and the ramifications of minimizing access to credit.

GSE Patch and Preferred Stock Purchase Agreement (PSPA) Terms

NAFCU is supportive of the proposal's extension of the GSE Patch to minimize market disruptions and allow credit unions to serve members who may have limited access to credit and may only be able to acquire a mortgage under the GSE Patch. As NAFCU has previously highlighted, the GSE Patch has been a key factor in credit unions' ability to lend to members in their communities, especially those of low- and moderate-income, to help them achieve homeownership. Credit unions provide more lending to low- and moderate-income earners at every DTI level, in part, because of their ability to utilize the GSE Patch. According to NAFCU's 2020 *Federal Reserve*

Meeting Survey, respondents reported that 61 percent of their outstanding mortgages qualified to be sold to the GSEs as of June 2020. This eligibility was slightly higher than in 2019. In addition, 19 percent of respondents indicated the expiration of the GSE Patch would have a material impact on their credit union. With the impending expiration of the GSE Patch on July 1, 2021 the delay of the mandatory compliance date allows the GSE Patch to continue until October 1, 2022. However, as the Bureau noted in the proposal, the FHFA and Department of the Treasury's recent amendments to the PSPAs may limit the utility of any GSE Patch extension.

Pursuant to the amended terms, after July 1, 2021, the PSPAs limit the GSEs to acquiring loans defined as QMs by section 1026(e)(2), (5), (6), (7), or (f). In practical terms, this means the GSEs may only acquire GSE Patch loans before July 1, 2021, or the previous date on which the GSE Patch was set to expire. NAFCU remains concerned about the adverse impacts of the expiration of the GSE Patch given that many credit unions sell their loans to the GSEs and the number of credit unions that reported the expiration would have a "material" impact on their institution. NAFCU urges the Bureau to continue monitoring the mortgage market and advocate the importance of the GSE Patch in this environment to the FHFA so they may work with the Department of the Treasury to amend the PSPAs allowing mortgages under the GSE Patch to continue to be eligible until the October expiration date. To enhance monitoring of the market, the Bureau should expand access to the National Mortgage Database (NMDB) for market participants. Access to the NMDB would provide timely information related to accessing credit and may assist credit unions in developing mortgage products. The Bureau should continue to explore viable alternatives to the GSE Patch before July 1, 2021. NAFCU has previously advocated that while the Seasoned QM definition would serve as an alternative pathway for borrowers, it is not a viable replacement to the GSE Patch as similar legal protections are not afforded at origination. On February 23, 2021, the Bureau indicated in an official statement that the agency may reconsider the final Seasoned QM definition. Considering recent PSPA term amendments, we urge the Bureau to work towards a better alternative to the GSE Patch.

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU strongly supports the delay of the mandatory compliance date from July 1, 2021 to October 1, 2022 to allow a reasonable amount of time to implement the changes to the ATR/QM rule and provide additional flexibility for credit unions to serve their members who continue to feel the impacts of the pandemic. NAFCU asks that the Bureau continue to monitor the market and make changes to the mandatory compliance date as needed and use the delay to work towards a viable alternative to the GSE Patch. 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