



August 10, 2020

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

Re: Docket No. CFPB-2020-0021; Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date

Dear Director Kraninger,

The Structured Finance Association (“SFA”) thanks you for the opportunity to respond to the Notice of Proposed Rulemaking on the Extension of the Qualified Mortgage Patch (“QM Patch”) pursuant to Docket No. CFPB-2020-0021. Given the QM Patch’s current scheduled expiration in January 2021, SFA’s members have uniformly expressed a desire for a smooth and orderly transition from the current Ability to Repay/Qualified Mortgage (“ATR/QM”) rule, towards any new or updated rule that may be implemented in the future. In order to aid in that transition, SFA supports extending the Patch until at least the new ATR/QM rule is in place, preferably with a 6-month overlap period where the current ATR/QM rules are in effect concurrently with the recently-proposed General Qualified Mortgage Loan definition pursuant to Docket No. CFPB-2020-0022 (“General QM”). SFA would like to draw attention to a specific timing issue arising in the transition from the current QM Patch to the recently-proposed General QM definition, and recommend a 6-month overlap period that resolves the identified timing issue and serves to address other unforeseen issues that may arise.

I. Timing Issue

The new General QM rule would be effective six months after the publication of the final rule, and would “apply to covered transactions for which creditors receive an application on or after the effective date.”¹ However, the Patch is only available for covered transactions “consummated on or before the effective date of the final rule.” This raises a question about loans for which an application is received, but are not consummated, prior to the effective date. In short, the issue arises because the expiration references the date of consummation, while the date of the new

¹ See page 7 of the preamble to the proposed General QM rule

General QM references the date of application. Prior transitions appear to be based on application date for both the expiration of the old definition and effective date of the new definitions.²

II. Suggested Resolution: Six Month Overlap Period

Given the desire for a smooth transition, SFA recommends that CFPB provide a six-month overlap period during which a creditor may take advantage of either the current QM Patch or the newly-proposed General QM rule, or both. We believe that an overlap period of six months where both the current QM Patch and newly-proposed General QM rules are in effect (allowing originators to elect either the current QM rules or the new General QM rules in order to achieve QM status) will adequately alleviate any unforeseen issues and provide time for originators and others to transition from the current regulatory regime to the new rules.

There may be other ways that CFPB could solve this identified gap, though feedback from our members indicates that the 6-month overlap period is the most simple and effective means to ensure continued access to credit during the transition. The key is that a technical glitch in the transition not thwart the reasonable expectations of the parties at the time a loan application is taken. CFPB may also consider publishing guidance or clarification for the treatment of loans for which it is not clear which operating QM rule should govern.

Changes of this magnitude often cause some unintended or unforeseeable operation consequences that do not become apparent until the new rules go into effect. These policies should be articulated clearly so the practices can be implemented consistently by the GSEs as well as the private market in order to avoid confusion arising from interpretive issues. As such, we also strongly encourage CFPB to remain receptive to feedback from market participants as any policy changes are rolled out. We thank you for your attention to these issues and for your consideration of SFA's suggested resolutions.

Sincerely,

Michael Bright,

CEO SFA

² See footnote 19 in the new General QM definition ("applicable only to covered transactions for which the application was received before April 1, 2016.")