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

Re: Docket No. CFPB-2020-0028; RIN 3170-AA98; Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition (https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule_seasoned-qm-loan-definition_2020-08.pdf)

Dear Director Kraninger:

The Structured Finance Association ("SFA") thanks the Consumer Financial Protection Bureau ("CFPB") for the opportunity to provide our comments to the CFPB's Notice of Proposed Rulemaking ("NPR") on the CFPB's proposed approach to the January 1, 2021 expiration of the so-called "GSE Patch," which presently is an important component of the definition of a "Qualified Mortgage" (or "QM"), by, in part, creating a new category of QM, called a Seasoned QM.

I. INTRODUCTION TO SFA

SFA represents over 360 members from all sectors of the securitization market, and our core mission is to support a robust and liquid securitization market. SFA provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. This response is submitted on behalf of SFA's QM Task Force, which is open to all interested SFA members, and is comprised of firms involved at every stage of the loan origination and securitization process in both the QM and non-QM markets. The views expressed in this letter represent a consolidated set of comments from across the industry, and they do not reflect specifically the viewpoint of any single member.

II. SFA'S RESPONSE

SFA previously provided comments to the CFPB's NPR with respect to the effective date of any new rule and the replacement of the QM patch with a pricing test. As a threshold matter, we applaud the willingness of the CFPB to consider permitting a loan to "graduate" to QM status based on sustained performance. While the context is different, the approach is similar to what Fannie Mae and Freddie Mac have been doing since 2013 when they first announced their "representation and warranties framework," which they subsequently revised and supplemented with their "remedies framework." These two frameworks constitute these agencies' election not to exercise their contractual remedy to demand repurchase of a loan that breaches the related underwriting representations and warranties made in connection with the sale of the loan. Underlying this approach is a reasonable inference that one way to determine definitively that a mortgagor had the ability to repay a mortgage loan at the time of consummation is if the mortgagor in fact makes timely regularly scheduled payments for a meaningful time period. We appreciate that there might be isolated exceptions to this conclusion based on the individual circumstances of a particular mortgagor, but we believe that a general rule relying on loan seasoning is sound public policy.

We have two comments to the NPR, both of which are grounded in a desire to expand both liquidity in the mortgage market and, in part as a result, access to affordable, responsible credit. First, we think the final rule should make clear that the subsequent transfer of a Seasoned QM by the originating lender does not impair the loan's QM status—that the Seasoned QM designation follows the loans to subsequent holders and secured creditors. The alternative would impair the liquidity of the loan in the hands of the originating lender, which could discourage lenders from making non-QM loans that they think will perform well and thus impair credit availability.

Second, the proposed rule would require that the loan be held for the designated seasoning time period by the originating lender in order to achieve QM status. This limitation appears to rely on a "skin in the game"-type requirement where the lender must retain an economic interest in the loan. Presumably this would align lenders' origination incentives in a similar way that issuers' incentives are aligned under the risk retention rule for mortgage-backed securities. SFA recommends that this portion of the rule be revised so that the only factor for a seasoned loan to achieve QM status is whether a borrower continues to make timely payments, regardless of who owns or services the loan.

As a preliminary matter, we note that Fannie Mae and Freddie Mac do not limit the availability and application of the "representations and warranties" and "remedies" frameworks only to the originating lender that made the initial loan and sold it to Fannie Mae and Freddie Mac. Rather, the selling representations and warranties made to Fannie Mae and Freddie Mac about a loans' compliance with their respective underwriting requirements become the responsibility of a subsequent loan servicer. And, the seasoning or performance test is applicable regardless of who sold the loan to Fannie Mae and Freddie Mac, and regardless of the loan servicer. Instead, the only relevant test is mortgagor performance. We think that approach makes sense in this context as well.

Similar to the first issue we raise above, allowing the originating lender to benefit from the sale of loans that may graduate into QM loans increases the liquidity of such loans in the secondary market and expands access to affordable, responsible credit. As presently drafted, since independent mortgage bankers generally do not have the capital to hold originated loans for investments, the Seasoned QM category essentially will be unavailable to them. This effectively results in the CFPB picking "winners and losers" among types of lenders in the origination of loans, which we believe may impair credit availability. Moreover, even for depository institutions that have the capital and business strategy to hold loans for investment, every such loan diverts capital that could be used to make new loans among other purposes. Depository institutions should be free to make loan investment decisions on the basis of business strategy, without being overly encumbered by the incentive to earn a particular regulatory treatment. Last, unduly burdening the free flow of loan sales based solely on regulatory treatment may inadvertently impair the private mortgage-backed securities markets and capital markets, which, of course, need loan product to trade. The net result of expanding the availability of the Seasoned QM, we believe, is enhanced credit availability and improved pricing to consumers.

III. CONCLUSION

SFA appreciates the opportunity to provide the foregoing comments. Should you wish to discuss any matters addressed in this letter further, please contact me at (202) 524-6301 or at michael.bright@structuredfinance.org.

Respectfully submitted,

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Michael Bright
CEO
Structured Finance Association