April 5, 2021

David Uejio
Acting Director
Consumer Financial Protection Bureau
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; Docket No. CFPB-2021-0003; 86 Fed. Reg. 12839

Dear Acting Director Uejio:

On behalf of the clients and communities we represent, we write to support the Bureau's proposed rule to delay the mandatory compliance date of the revised Qualified Mortgage (QM) definition to October 1, 2022.

We agree with the Bureau that delay of the mandatory compliance date is warranted given the uncertainty in the mortgage market and the economy as a whole. Given that over 2.5 million borrowers are in active forbearance and unemployment remains relatively high, the Bureau and mortgage industry should be laser-focused on preventing unnecessary foreclosures due to the pandemic. It will take significant resources to effectively move borrowers from forbearance to post-forbearance, and, as the Bureau recognizes, disruptions in the mortgage market from servicing may impact loan originations.[1] Delaying the mandatory compliance date and allowing continued use of the QM patch or the pricing QM will provide originators with flexibility to provide credit. By not being required to comply with the pricing QM until October 1, 2022, market participants can focus resources on addressing borrowers in need due to the pandemic.

It is important, however, in extending the mandatory compliance date, for the Bureau to work with Treasury Secretary Janet Yellen and FHFA Director Mark Calabria to amend Preferred Stock Purchase Agreements (PSPAs) to ensure that the Government Sponsored Enterprises (GSEs) have the authority to acquire mortgages in reliance on the GSE Patch. It is our understanding that terms of the PSPAs may limit purchases pursuant to the GSE Patch. In order to truly allow originators to use QM pricing or the GSE Patch, amendments appear to be necessary. The full participation of these important providers of mortgage liquidity is especially critical as the economy begins to recover from the pandemic's effects and demand for mortgage credit, especially among lower income earners most affected by the downturn, increases with incomes stabilizing as employment and earned income grow with the recovery.

Furthermore, to better address how the pandemic and the changes in the QM rules are impacting the mortgage market, we urge the Bureau to increase access to mortgage origination data. Specifically, we urge the Bureau to make the National Mortgage Database (NMDB) publicly available at the investor level. Stakeholders need a shared set of data to fully engage with the Bureau about how new rules and market conditions are impacting access to credit, innovation in the market, the overall health of mortgage markets, loss mitigation and loan modification programs, and affordable lending. The shared data points for which we suggest increased access include, but are not limited to:

[1] 86 Fed. Reg. 12839 at 12848 (Mar. 5, 2021).

- Borrower demographics (race, ethnicity, age, gender)
- Geography (location of the property)
- Lending channel (conventional, FHA, VA, etc.)
- Loan purpose (purchase, refinance, cash-out refinance, etc.)
- Occupancy (primary residence, second home, investment property, etc.)
- Spread over Average Prime Offer Rate (APOR)
- Loan characteristics
    - Loan-to-value (LTV) ratio
    - Debt-to-income (DTI) ratio
    - Credit score
- QM category
- Loss mitigation performance data

Given current market turbulence, it is critical that we not wait five years for a “look back” report to assess the effectiveness of the QM revisions. This is far too much of a delay in understanding how policy changes impact consumers’ access to mortgage credit and homeownership. Expanded access to updated origination data is critical to understanding market trends, access to credit, and the QM credit box. This is especially true in light of the significant departure from the statute represented by the current approach.

We also continue in our objections to pricing QM as a measure of Ability to Repay (ATR), especially when paired with a safe harbor.[2] The underlying analysis for the final pricing QM rule assumed loans would be affordable based on early, market-wide default rates, an approach that will leave many vulnerable homeowners with unaffordable loans and little recourse. This pricing model also incorporates existing racial disparities in loan pricing and exacerbates the negative impacts of both market expansions and contractions. These negative impacts will be greater given the Bureau's very high price thresholds for smaller loans. These very high priced loans (up to 650 basis points above APOR) will be concentrated in communities of color where we still see pricing discrimination and other market abuses, and where demand for smaller loans is high.

We support the Bureau’s decision to extend the mandatory compliance date and urge the Bureau to increase access to data to facilitate a full discussion on the future of the mortgage market.

We thank you for the opportunity to submit comments.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)

Consumer Federation of America

Prosperity Now

[2] The comments we submitted to the Bureau’s QM proposal are found here: https://www.nclc.org/images/pdf/foreclosure_mortgage/dodd-frank/NCLC-Joint-Long-QM-Comments.pdf