

April 5, 2021

Mr. Dave Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2021-0003, Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date

Dear Acting Director Uejio:

We the undersigned civil rights organizations are writing in response to the Consumer Financial Protection Bureau's ("CFPB's") March 5, 2021 proposal to extend the mandatory July 1 compliance date for the General QM Final Rule until October 1, 2022.¹ The CFPB's proposal would permit lenders to use the old General QM definition; the new General QM definition adopted on December 10, 2020; or the Temporary GSE QM loan definition (the "Patch") until October 1, 2022. We do not believe the extension is necessary since the new General QM definition and the Patch overlap so thoroughly, though we do not believe it would be harmful. However, as you know, the Patch cannot continue indefinitely because it will cease to function once the Fannie Mae and Freddie Mac (collectively, the "GSEs") are released from conservatorship.

In the proposal, the CFPB also stated that it "plans to evaluate the General QM Final Rule's amendments to the General QM loan definition and will consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM Final Rule."² We did not oppose the General QM Final Rule that the CFPB adopted last year as the replacement definition because it is the only alternative proposed that would reinforce inclusive access to safe mortgage products. Inclusive access is important because it incents lenders to provide safe, sustainable loans to the broadest possible group of creditworthy borrowers. For the reasons stated below, we strongly encourage the CFPB to retain the General QM Final Rule that was adopted on December 10, 2020 (the "Final Rule") while adding additional fair lending protections. We also strongly recommend that the CFPB evaluate the pricing threshold for small loans and repeal the final rule for the Seasoned QM Loan Definition.

The Final Rule's loan feature limitations and appropriate verification methods provide robust protections for all borrowers. The QM product's safeguards themselves – amortizing 30-year mortgages, with low fees and protection against short-reset ARMs – significantly [reduce foreclosure rates](#) for borrowers. The foreclosure crisis was caused by the failure of subprime loans, which included over half of mortgages to African American borrowers and [roughly half of](#)

¹ 86 Fed. Reg. 12839 (March 5, 2021).

² 86 Fed. Reg. 12840.

[mortgages to Hispanic borrowers](#),³ and Alt A loans – virtually none of which met the general Dodd-Frank prohibitions or the QM requirements of the Final Rule. Moreover, the General QM definition limits risky features, such as negative amortization. Finally, the Final Rule appropriately requires lenders to verify information and provides a verification safe harbor based on certain specified manuals. Taken together, these provisions of the Final Rule address many of the risky loan features and underwriting practices that led to the financial crisis.

Over 11 years of extensive research and review have shown that alternatives to the Final Rule will unnecessarily and unfairly restrict access to credit for borrowers of color. If the CFPB searches for an alternative to the Final Rule, presumably the goal would be to find one that involves more individualized ability to repay assessments to reduce the chances of borrowers being foreclosed on. The undersigned groups and many others have been working on QM for 11 years now. Similarly, for the General QM definition, the CFPB has published a thorough market study, an ANPR, two proposed rules, and two final rules. However, during this entire time, only the Patch and Final Rule both reduce foreclosure rates for QM borrowers while avoiding the disproportionate exclusion of creditworthy borrowers of color from QM safeguards. For example, the most well-developed QM alternatives submitted in the last few years would all require the “GSEs” to reject significant numbers of the affordable loans that they buy today. We believe this result should be disqualifying because the GSEs should be buying more loans to Black and Latino borrowers, not fewer. In 2019, for example, approximately 4.3% of GSE purchase loans were from Black borrowers and 11% from Hispanic borrowers. Further, according to the Urban Institute’s Housing Credit Availability Index, credit is already tight, with projected default rates less than half that of the 2001 – 2003 period.⁴ We are highly skeptical that there is a third option waiting to be discovered after all this time.

The priced-based method used in the Final Rule represents a more holistic analysis than the arbitrary focus on a 43% DTI, which is only one of many factors typically considered in underwriting. The priced-based method is a holistic consideration of the numerous factors that are captured by the GSE or lender underwriting and ability to repay considerations to lend within the price-based limit, including but not limited to DTI ratios. In traditional underwriting, a higher DTI can be appropriately offset by other compensating factors. This more complete analysis simply does not lend itself to being set out in a static government regulation that focuses mainly on an arbitrary 43% DTI cap.

A DTI-based General QM definition would likely result in a bifurcated mortgage market, with White borrowers obtaining conventional QMs while borrowers of color are forced into the more expensive FHA QM or forced out of the mortgage market altogether. An unnecessarily restrictive definition of QM would push a considerable share of creditworthy borrowers – including a large share of borrowers of color – out of the mainstream mortgage market and possibly out of the mortgage market altogether. It would result in restricting credit access and steering borrowers of color to certain lending streams and mortgage products. This is a result our organizations wish to avoid. The U.S. already has a dual credit market that

³ R.B. Avery, K.P. Brevoort, and G.B. Canner, The 2006 HMDA Data, at p. A88, Federal Reserve Bulletin (December 2007), available at <http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf>.

⁴ Urban Institution Housing Finance Policy Center Housing Credit Availability Index, Q3 2020, available at <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-credit-availability-index>.

disproportionately harms consumers and communities of color and locks them out of the financial mainstream. The CFPB must apply a racial equity and fair lending lens to all of the policies it adopts as well as ensure its policies expand fair, quality, credit access for underserved communities. The CFPB's policies must not exacerbate the dual credit market, but instead, eliminate it. Historic and ongoing discrimination has caused major wealth inequality, and a lack of family wealth, making it [more challenging for Black and Latino families to meet unnecessarily restrictive QM requirements](#).

If borrowers excluded from the General QM definition could still get a mortgage, they would be forced into one with higher rates, either an FHA loan or one without the product protections that come with QM status. Creditworthy borrowers excluded from QM loans may also be forced into other options like land contracts or other potentially abusive schemes as we see in cities like Detroit. The higher mortgage rates and potentially more dangerous terms mean that a tight General QM definition paradoxically would **increase** the risk of foreclosure for low-wealth borrowers able to obtain a mortgage. Further, many borrowers would be pushed out of the market altogether, and therefore denied the opportunity to [build wealth through homeownership](#). Since the Great Recession, 1.5 million families have exited homeownership and entered into the rental market, pushing up costs as there is an extreme lack of affordable housing. These families would be condemned to pay [inexorably rising rents](#). Because a more restrictive QM would make borrowers who receive mortgages pay higher mortgage rates and get foreclosed on at greater rates, and deny others the ability to own a home at all, this kind of QM definition can [exacerbate the racial wealth gap](#) rather than help close it and is the opposite goal of the Administration's racial equity priorities.

The Final Rule could be improved by more clearly addressing fair lending concerns, including addressing fair lending in the text of the regulation and limiting the ability of a lender to receive the QM safe harbor where pricing discrimination has occurred. While the holistic approach of the Final Rule provides an inclusive definition of the General QM and therefore ameliorates racial disparities between people able to obtain General QM loans and those condemned to the non-General QM sector, it is important that the CFPB also ensure that price discrimination not occur within the QM channel, whatever definition the CFPB adopts. The Dodd Frank Act amended the Truth in Lending Act to accomplish several major goals. Chief among the purposes of the Dodd Frank Act is to “assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.”⁵ Discrimination, by its nature, requires deception and obfuscation of the true terms and conditions of mortgage products. Pricing bias leads to the origination of mortgages that are unfair, abusive, and deceptive.

The Final Rule could be improved by clearly stating in the text that QM status does not confer a presumption of compliance with fair lending laws. In the preamble to the Final Rule, the CFPB stated: “[T]he General QM loan definition, as amended by this final rule, does not create an inference or presumption that a loan satisfying the General QM loan definition is compliant with any Federal, State, or local anti-discrimination laws that pertain to lending. A creditor has an independent obligation to comply with ECOA and Regulation B....”⁶ We strongly encourage the

⁵ 15 U.S.C. 1639b(a)(2).

⁶ 85 Fed. Reg. 86340 (Dec. 29, 2020).

CFPB to move this language to the text of the regulation to ensure that creditors as well as courts are clear on the distinction between QM compliance and fair lending compliance. Moreover, we encourage the CFPB to place this language in a manner that clarifies that no QM loans (including General QMs as well as other QMs) enjoy a presumption of fair lending compliance.

In addition, the CFPB must mitigate actions that can negatively impact a borrower's ability to repay their debt obligation due to pricing discrimination. The Truth in Lending Act requires the creditor to make a "reasonable and good faith determination" that the consumer has a reasonable ability to repay the loan.⁷ We do not believe that the creditor is making a "reasonable and good faith determination" if the amounts considered by the creditor are inflated based on illegal pricing discrimination. Therefore, the CFPB should limit the ability of a creditor to receive the QM safe harbor in instances where pricing discrimination has occurred. More specifically, if a creditor originates a loan that meets the safe harbor thresholds outlined in the regulation and discovers a likely violation of the Equal Credit Opportunity Act ("ECOA") resulting from pricing discrimination, the creditor should be required to self-report the likely violation to the CFPB and its prudential regulator within 30 days of the discovery of the likely violation. The creditor should have 30 days, from the date of discovery, to remediate the harm resulting from the likely violation. Should a creditor fail to self-report a likely violation and remediate the harm resulting from a likely violation within 30 days of the date of discovery of the likely violation, and a judicial, administrative, or regulatory body, through a final adjudication (including a public settlement or public consent order) indicates that pricing discrimination in violation of the ECOA has occurred, the safe harbor should not apply to the loan(s) related to that violation. Loans related to that violation may still qualify as QM loans, but they should not be afforded a conclusive presumption of compliance.

The CFPB should also evaluate the pricing thresholds for small loans in order to protect borrowers, particularly borrowers of color. The rule incorporates high price thresholds for small loans that are excluded from the safe harbor. Because borrowers of color disproportionately receive small loans as well as loans in the rebuttable presumption category, we believe the CFPB should revisit these provisions and evaluate the price threshold for this category of loans. According to an analysis by the National Fair Housing Alliance based on 2019 HMDA data, Black and Latino borrowers were over twice as likely as Whites to receive mortgages with a rate spread. With respect to the rebuttable presumption for small loans, the Final Rule provides the following:

- For a first-lien covered transactions with a loan amount greater than or equal to \$66,156 (indexed for inflation) but less than \$110,260 (indexed for inflation), the APR may not exceed APOR for a comparable transaction as of the date the interest rate is set by 3.5 or more percentage points. (Section 1026.43(e)(2)(vi)(B))
- For a first-lien covered transaction with a loan amount less than \$66,156 (indexed for inflation), the APR may not exceed APOR for a comparable transaction as of the date the interest rate is set by 6.5 or more percentage points. (Section 1026.43(e)(2)(vi)(C))
- For a first-lien covered transaction secured by a manufactured home with a loan amount less than \$110,260 (indexed for inflation), the APR may not exceed APOR for a

⁷ 15 U.S.C. 1639c(a)(1).

comparable transaction as of the date the interest rate is set by 6.5 or more percentage points. (Section 1026.43(e)(2)(vi)(D))

We believe that the CFPB should evaluate whether the APR thresholds for small loans are too high and will contribute to discriminatory outcomes for borrowers and communities of color. We are particularly concerned that the Final Rule's threshold appears too high for loans backed by site-built houses with balances below \$66,156.

Finally, the undersigned oppose the final rule for the Seasoned QM Loan Definition that was adopted in December 2020⁸ and recommend that the CFPB repeal the rule. The CFPB's final rule raises significant concerns under the Administrative Procedures Act as it appears that the CFPB exceeded its authority in promulgating this rule and provided only a perfunctory amount of time for notice and comment at the height of the pandemic. The CFPB's rule purports to override the longstanding protections under the Truth in Lending Act (15 U.S.C. 1640(k)) by removing the defense to foreclosure for loans that did not originally meet the definition of a qualified mortgage. Not only does this rule contravene the language and intent of the Truth in Lending Act and the ability to repay provisions, it removes a critical protection for harmed borrowers, particularly borrowers of color.

Thank you for your consideration of our views.

Sincerely,

Center for Responsible Lending
Leadership Conference on Civil and Human Rights
National Association of Hispanic Real Estate Professionals
National Association of Real Estate Brokers
National CAPACD
National Community Reinvestment Coalition
National Fair Housing Alliance
National Urban League
UnidosUS

⁸ 85 Fed. Reg. 86402 (Dec. 29, 2020).