



MORTGAGE BANKERS ASSOCIATION

August 10, 2020

Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>

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

Re: Request for Comment: QM Extension of Sunset Date
Docket No. CFPB 2020-0021

Dear Director Kraninger:

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule to extend the Temporary GSE QM loan definition (GSE Patch) sunset provision. MBA commends the Bureau for this proposal. Like the recently proposed rule to amend the General QM definition, this proposed rule reflects a commitment to ensure the continued availability of sustainable, affordable mortgage credit.

MBA supports the Bureau's proposal for a six-month implementation period between *Federal Register* publication of the final rule amending the General QM definition and that rule's effective date.² For the reasons outlined below, MBA recommends that the Bureau retain the GSE Patch for an additional six months following the effective date for the revised General QM parameters. Upon the conclusion of this overlap period, the GSE Patch should be allowed to expire. MBA also recommends additional enhancements to the QM framework regarding

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,100 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² CFPB, *Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition*, June 22nd, 2020 (RIN 3170-AA98/Docket No. CFPB 2020-0020).

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the role of the GSE conservatorships, the definition of a loan “application,” and the ability to cure QM violations related to points and fees.

I. Background

As explained in comments MBA submitted in response to the advance notice of proposed rulemaking (ANPR), the GSE Patch serves a crucial role in the mortgage market. By providing an exception to the General QM loan definition’s strict 43 percent debt-to-income (DTI) ratio threshold and rigid income and debt verification criteria, the GSE Patch facilitates access to affordable mortgage credit for credit-worthy borrowers who fall outside the requirements of the General QM definition. The GSE Patch’s importance was confirmed in the Bureau’s assessment report on the Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule), which estimated that nearly one out of every six loans originated in 2018, or 957,000 loans representing a total of \$260 billion in originations, benefited from the GSE Patch. Absent a suitable replacement for the GSE Patch, access to affordable mortgage credit for borrowers with DTI ratios greater than 43 percent and borrowers without Appendix Q required documentation (such as those reliant on self-employment, “gig” or irregular employment, or rental income) would be curtailed significantly and be more expensive.

In response to the potential for reduced credit availability and market disruption, the Bureau proposes to extend the GSE Patch to the effective date of a final rule amending the General QM loan definition or the date on which the GSEs exit conservatorship—whichever occurs first.³ With this proposal, the Bureau seeks to “ensure that responsible, affordable mortgage credit remains available to consumers who may be affected” if the GSE Patch were to expire before a suitable replacement can take effect.

MBA strongly supports this objective and urges the Bureau to prevent any gap between the expiration of the GSE Patch and the implementation of its replacement. With that shared goal in mind, we believe this can best be achieved with modest modifications to the Bureau’s proposal to minimize any market disruptions. As explained below, extending the GSE Patch to six months after the effective date of the new General QM rule would more thoroughly ensure the continued availability of affordable mortgage credit, eliminate market uncertainty, and reduce unnecessary implementation burdens.

II. Benefits of a Short-Term Extension of the GSE Patch

The Bureau proposes to base the duration of the GSE Patch extension on the timeline by which the new General QM rule will take effect. By explicitly connecting the sunset of the Patch and the implementation of the new QM parameters, the Bureau is appropriately recognizing the inherent uncertainty in the rulemaking process. While the Bureau cannot

³ CFPB, *Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Extension of Sunset Date*, June 22nd, 2020 (RIN 3170-AA98/Docket No. CFPB 2020-0021).

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determine the exact date on which the new QM parameters will become effective at this time, it can better ensure a smooth transition between these frameworks by linking their timelines. MBA supports such a linkage, particularly in contrast to the other options for addressing the GSE Patch that are discussed in the proposed rule.

a. The GSE Patch should not be preserved indefinitely

The GSE Patch served to ensure stability in the mortgage market, as it was intended to do, in the years following its inception. The flexibility that it afforded consumers, lenders, and investors helped to maintain broad access to responsible mortgage credit. The GSE Patch was not, however, intended to become a permanent feature of the housing finance system. While necessary over the past several years, the GSE Patch also provides significant advantages to the GSEs by effectively codifying their underwriting parameters into the QM definition. This outcome produces excessive reliance on the GSEs while stifling innovation by other market participants. An improved QM framework would feature transparent parameters that apply evenly across the market and are not based on a particular set of investor or guarantor guidelines. As such, an extension of the GSE Patch should be viewed as a bridge to this improved QM framework – not a long-term feature.

b. The GSE Patch should not be tied to the end of the GSE conservatorships

While the timeline for the General QM rulemaking features some uncertainty, there are reasonable bounds on this timeline and market participants can anticipate the likely window of effective dates with a reasonable degree of confidence. The timeline associated with the conclusion of the GSE conservatorships, however, features far greater levels of uncertainty. The conservatorships have already lasted many years beyond the expectations in place at their onset, and the path to ending the conservatorships will be influenced by significant regulatory, legislative, and market factors that are difficult to predict. Policy decisions to continue the conservatorships or market conditions that impede capital raises by the GSEs, for example, could extend the conservatorships for a lengthy period of time. As with the scenario discussed above, this outcome would keep the GSE Patch in place far longer than is necessary to ensure a smooth implementation of the new General QM rule. It is also unclear how much advance notice would be provided to market participants when the GSEs are permitted to exit conservatorship. Without a sufficient implementation period, the transition away from the GSE Patch could cause large-scale market disruptions. Given the prospect that the GSEs could be in conservatorship for a lengthy period of time, the GSE Patch should not be tied to the end of the conservatorships.

c. The GSE Patch should not be extended to a date certain

While excessive levels of uncertainty regarding the extension of the GSE Patch would negatively impact the market, the rigidity of a date certain would threaten to undermine the objectives that the Bureau has set forth in the proposed rule. Because the timeline for the

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General QM rulemaking is not known with complete certainty, it is not yet possible for the Bureau to provide a specific date on which the new QM parameters will take effect. As such, any specific date on which the GSE Patch is set to expire could be too early or too late to facilitate a smooth transition. If the expiration of the GSE Patch is set too early, it would not serve as an effective bridge, as there would remain a gap between the old framework and the new framework – likely resulting in market disruption. Alternately, if the expiration of the GSE Patch is set too late, the GSE Patch would remain in place longer than is needed, leading to the same problems described in the above scenarios. For these reasons, it would be unwise to extend the GSE Patch to a date certain.

III. Concerns Regarding the Proposed Rule

a. Potential gap in QM coverage

While the Bureau’s proposal to set the GSE Patch expiration at the earlier of the GSEs exiting conservatorship or the effective date of the final rule amending the General QM definition seeks to prevent a gap in QM “coverage” for many borrowers, further technical adjustments are needed to achieve this goal. As proposed, the expiration of the GSE Patch leaves open the possibility that borrowers currently served by the GSE Patch (e.g., borrowers with higher DTI ratios, non-W-2 wage earners, etc.) would be unable to obtain QM loans for a period of time.

This gap in QM coverage is a result of the Bureau’s proposals:

- (1) that the GSE Patch definition apply to loans “*consummated on or before the earlier of either*” the GSEs exiting conservatorship or “[t]he effective date of a final rule issued by the Bureau amending [the General QM loan definition];”⁴ and
- (2) that the proposed General QM definition “apply to covered transactions for which creditors *receive an application on or after this effective date[.]*”⁵

Taken together, these provisions create a gap in QM coverage for certain borrowers who apply before the effective date of the new General QM definition, but close on their loans after that date. To demonstrate this potential QM coverage gap, we offer the following example:

Assume the effective date for the new General QM definition is October 1, 2021. If a high-DTI borrower (i.e., DTI > 43%) applies for a loan on September 25, 2021, and that loan closes any time after October 1, 2021, the loan could not be originated as a QM loan under either the GSE Patch or the amended General QM loan definition. The GSE Patch would have expired before the loan closes and, with an application date before the effective date of the new

⁴ *Id.* (emphasis added); see also current 12 C.F.R. § 1026.43(e)(4)(ii).

⁵ CFPB, *Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition*, June 22nd, 2020 (RIN 3170-AA98/Docket No. CFPB 2020-0020) (emphasis added).

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General QM definition, the loan would not be eligible to be originated as a new General QM loan. Such an outcome would be even more likely for construction loans, given the longer period of time between application and closing for these mortgage transactions. While the time between application and closing is, for most loans, measured in weeks, a construction-to-permanent loan will often take many months – and potentially up to a year or more – to close. This longer process makes it more likely that these loans would fall in the QM coverage gap, with a loan application date before the effective date of the new General QM definition and a loan closing after the expiration of the GSE Patch.

b. Potential overlap with URLA implementation

The proposed timeline also leaves open the possibility that the new General QM rule will come into effect near the March 1, 2021 mandatory use date for the redesigned Uniform Residential Loan Application (URLA). Transitioning to the new URLA represents a tremendous implementation challenge for mortgage lenders. The overhauled form is significantly more detailed than the previous version, with more than twice as many data fields, requiring extensive process and system changes affecting each step of the mortgage origination process.

While much of the industry's transition efforts will occur before the March 1, 2021 mandatory use date, other components of the implementation process will extend well beyond March 2021. Many issues—software bugs, process inefficiencies, training deficiencies, etc.—are difficult to detect in pre-transition testing. Inevitably, they will be identified and corrected in the months after the mandatory use date, once the entire mortgage ecosystem has transitioned to the new form. Thus, throughout the first six months of 2021, lenders' compliance and operations departments will be focused on monitoring for and, if necessary, resolving any issues that arise out of the URLA implementation process. Should the effective date for the new General QM definition also occur during this time, the implementation burden would be compounded significantly. While the Bureau does not intend for the effective date to occur before April 1, 2021, we encourage the Bureau to avoid establishing an effective date anytime during the first six months of 2021 in order to mitigate lenders' compliance burden and support an efficient transition to the new QM framework.

c. Potential for the GSEs to exit conservatorship

Under the proposal, two events could trigger the expiration of the GSE Patch: the effective date of the new General QM rule or the GSEs exiting conservatorship. We recognize that the Bureau has determined that the second trigger—the GSEs' exit from conservatorship—is outside the scope of this rulemaking and may not occur during the period in which this rulemaking takes place. We believe the Bureau should reconsider this decision, or at a minimum be prepared to provide guidance to the market well in advance of a possible end to the GSE conservatorships. The proposed rule states that if the GSEs exit conservatorship before the new General QM rule comes into effect, the Bureau "will evaluate at that point

what, if any, steps to take.”⁶ The proposal’s silence on this important question creates needless uncertainty, and the inclusion of the “if any” phrasing suggests a worrisome possibility of allowing the Patch to expire before its replacement takes effect.

This uncertainty is likely to grow in the coming months, as the Federal Housing Finance Agency (FHFA) has indicated that it plans to continue taking actions to facilitate an end to the GSE conservatorships.⁷ As the persistent, strong preference for QM loans demonstrates, the mortgage market has little appetite for ATR uncertainty. It is not, therefore, unreasonable to expect a steep increase in the cost of credit, or perhaps an inability for some borrowers to access credit entirely, if the GSE Patch were to expire without replacement due to the GSEs’ exit from conservatorship. This outcome is inconsistent with the Bureau’s objective to ensure the availability of responsible, affordable mortgage credit. The concerns expressed by the Bureau with respect to the GSE Patch expiring prior to the implementation of the revised General QM definition are equally applicable in a scenario in which the GSEs’ exit from conservatorship is the cause for the GSE Patch expiration. The need for a solution that provides market stability therefore is equally great.

MBA supports efforts to eliminate the GSE Patch and replace it with a more consistent, market-wide QM definition that does not confer special advantages on the GSEs. In this time of great uncertainty, however, we believe the most reasonable approach is simply to eliminate the reliance on the potential end of the conservatorships as a trigger for the end of the GSE Patch. The Bureau has acknowledged that the extension of the GSE Patch will be short-term in nature, and thus, any period in which the GSE Patch remains in place despite the GSEs having exited conservatorship will be brief. Further, in practice, the near-term capital deficiencies at the GSEs are so substantial that they are sure to remain under stringent FHFA supervision (perhaps through consent orders or capital restoration plans) even if they have exited conservatorship. Under such a scenario, FHFA would be positioned to ensure conservative credit policies at the GSEs, which should eliminate any fear of a rapid deterioration in QM standards under the GSE Patch.

Together, the potential for severe market disruption and the safeguards against unsafe or unsound practices underscore the need to remove the GSEs’ potential exit from conservatorship as a trigger for the expiration of the GSE Patch.

⁶ CFPB, *Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Extension of Sunset Date*, June 22nd, 2020 (RIN 3170-AA98/Docket No. CPF 2020-0021).

⁷ See Federal Housing Finance Agency, 2019 Report to Congress (June 15, 2020) available at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_2019_Report-to-Congress.pdf. FHFA has also indicated that an end to the GSE conservatorships is dependent on potential actions to be taken by the GSEs.

IV. Recommended Revisions to the Proposed GSE Patch Extension

MBA offers a simple solution to address the issues discussed above. The Bureau should set the GSE Patch expiration at a date six months after the effective date of the new General QM rule, which in turn should become effective six months after its publication in the *Federal Register*. By extending the GSE Patch beyond the date the new General QM rule becomes effective, the Bureau would minimize the number of loans affected by the gap in QM coverage for borrowers who apply before, but close after, the new rule's effective date.⁸ Further, extending the GSE Patch to six months after the effective date of the new General QM rule would better ensure that implementation does not overlap with the market's efforts to implement the new URLA. Finally, removing the GSEs' potential exit from conservatorship as a trigger for the GSE Patch's expiration would eliminate market uncertainty over the possibility for a gap in QM coverage should the GSEs exit conservatorship before the new General QM rule comes into effect.

V. Coverage Based on "Application Date"

Under the Bureau's proposals, the revised General QM definition "would apply to covered transactions for which creditors receive an application on or after [the] effective date" of the new QM rule.⁹ It is unclear how this approach, which would make a loan's application date the decisive factor in determining whether the new General QM definition applies, would function in practice given the lack of a clear definition for "application date."

Regulation Z does not define "application" specifically for purposes of the ATR/QM rule. Instead, Regulation Z includes a specific definition of an application "[f]or transactions subject to the TILA-RESPA Integrated Disclosure (TRID) Rule" which defines an "application" as the submission of six pieces of information: consumer's name, income, and Social Security number, as well as the property address, estimated value of the property, and amount of mortgage sought.¹⁰ Regulation Z also includes a more general definition used for all other Regulation Z requirements (i.e., "application means the submission of a consumer's financial information for purposes of obtaining an extension of credit").¹¹ We note that nearly all transactions subject to the ATR/QM Rule and therefore the proposed QM definition will be "subject to" the TRID rule.

Along with ensuring "application" is clearly defined, it is important to consider the implementation challenges associated with any potential definition. While lenders, for

⁸ We encourage the Bureau to consider the impact the terms of any GSE Patch extension would have on all loan types. For example, while a six-month overlap between the GSE Patch and the new QM framework would be sufficient for most mortgage transactions, it is likely that certain mortgage loans—in particular, some construction-to-permanent loans—would nonetheless fall into the QM coverage gap (i.e., application date before the new rule's effective date and loan closing more than six months after the new rule's effective date).

⁹ CFPB, *Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition*, June 22nd, 2020 (RIN 3170-AA98/Docket No. CFPB 2020-0020).

¹⁰ 12 C.F.R. § 1026.2(a)(3)(i).

¹¹ 12 C.F.R. § 1026.2(a)(3)(ii).

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example, track the TRID application date for TRID compliance and secondary market purposes, the date a consumer submits “financial information for purposes of obtaining an extension of credit” is not tracked in the ordinary course of business. Creating separate procedures to record the general Regulation Z application date, or an altogether new definition for applications, would be difficult and could potentially cause confusion in secondary market transactions. Thus, we recommend the Bureau use the TRID definition if application date is ultimately used to determine coverage under the new General QM definition.

VI. Points and Fees Cure Provision

Section 1026.43(e)(3) of the ATR/QM rule establishes a cap on allowable points and fees for a QM loan.¹² If, after consummation, it is determined that a loan’s points and fees exceeded the cap, a creditor can refund the excess points and fees provided certain conditions are satisfied. This points and fees cure provision only applies, however, to transactions consummated on or before January 10, 2021.

Though seldom used, the points and fees cure benefits both lenders and consumers. The cure allows lenders to resolve errors that would, if left unresolved, remove a loan’s QM status. As a result, the cure provides an additional layer of compliance certainty. Further, when exercised, the cure benefits consumers in the form of money that is refunded to them. While the QM proposals put forth do not include revisions to the rule’s points and fees provisions, MBA strongly encourages the Bureau to consider making the points and fees cure permanent.

MBA thanks the Bureau for its efforts to address the impending expiration of the GSE Patch, and appreciates the opportunity to share our comments.

Sincerely,



Robert D. Broeksmit, CMB
President and Chief Executive Officer
Mortgage Bankers Association

¹² In 2020, the points and fees threshold is set at 3 percent of the total loan amount for a loan greater than or equal to \$109,898, with higher thresholds for smaller loan amounts. 12 C.F.R. § 1026.43(e)(3).