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April 5, 2021

David Uejio
Acting Director
Bureau of Consumer Financial Protection
1700 G St 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, RIN 3170-AA98

Dear Acting Director Uejio:

The Independent Community Bankers of America¹ appreciates the opportunity to provide comments regarding the proposed delay of the mandatory compliance date of the General Qualified Mortgage (QM) Loan Definition rule which was finalized by the Consumer Financial Protection Bureau (CFPB or Bureau) in December of 2020. Among other significant changes to the General QM loan definition, the final rule amended Regulation Z by replacing the General QM loan definition's debt-to-income (DTI) limit with a limit based on loan pricing. The General QM Final Rule took effect on March 1, 2021, and it set a mandatory compliance date of July 1, 2021. The Bureau is now proposing to delay the mandatory compliance date of the General QM Loan Definition until October 1, 2022. The Bureau's proposal is intended to "help ensure access

¹ *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.*

With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, over \$4.4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

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to responsible, affordable mortgage credit and to preserve flexibility for consumers, particularly those affected by the COVID-19 pandemic.”

During this extension, lenders will be able to use either the General QM Loan Definition in effect prior to March 1, 2021 or the new General QM Loan Definition that went into effect on March 1, 2021. Additionally, the special category of QM loans that relates to loans purchased or guaranteed by Fannie Mae or Freddie Mac (the GSEs), also known as the “GSE patch,” will extend until October 1, 2022, beyond its previous expiration date of July 1, 2021.

ICBA strongly supports the Bureau’s proposed delay of the Mandatory Compliance Date of the General QM Loan Definition. Moreover, ICBA encourages the Bureau to use this delay to closely reexamine and repropose parts of the General QM Loan Definition, specifically the use of loan pricing to determine if a loan meets the definition of QM. ICBA, among other industry stakeholders, has raised serious concerns that the new General QM Loan Definition’s reliance on a pricing metric does not sufficiently measure a borrower’s ability to repay (ATR) the loan, and that loan pricing can and will be manipulated by some lenders to put people into homes they cannot afford.

ICBA’s September 2020 comment letter to the Bureau highlighted our concerns regarding the removal of the DTI metric and adoption of a pricing-based approach to determine QM status: *“As currently proposed, the pricing approach in this NPR would grant QM safe harbor status to a loan with a 100 percent DTI as long as the lender considered and verified the borrower’s income, assets, and debts and if the APR on that loan was within 150 basis points over the APOR. ICBA strongly believes this will lead to an erosion of credit standards and a return to “no-ratio” loans to borrowers who cannot afford them.”*²

While the use of a DTI metric is not perfect on its own, it does provide an indicator of a borrower’s ability to handle the debt. Mortgage underwriters use DTI as one metric – along

² https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/qm-definition-letter-final-icba.pdf?sfvrsn=f3d63917_0

with other factors such as savings, income, credit score, and equity – to determine the borrower’s ability to repay the loan. Loan pricing is typically not considered when underwriting a loan because most lenders recognize it has no direct connection to a borrower’s financial situation. The Bureau sends an inconsistent message regarding ATR by suggesting that creditors “consider and verify” a DTI ratio without specifying at least a maximum DTI level that sets a clear “bright line” standard regarding what is QM and what is not.

ICBA’s recommendation is for the Bureau to allow for a DTI range of 43-45 percent on loans that would qualify for QM Safe Harbor status, and a 45-50 percent range on loans that would receive a rebuttable presumption of compliance. However, loans with DTIs over 50 percent should not be considered QM. A study that analyzed the composition of the GSE Patch market share supports the argument that loans made to borrowers within these ranges should not necessarily be disqualified from QM designation.³ These ranges, in conjunction with compensating factors supporting ATR, will allow for prudent, flexible underwriting that recognizes DTI as a crucial element in determining ATR. At a minimum, if the Bureau continues to use a pricing approach to determine QM, ICBA recommends the Bureau restrict QM designation to loans with a DTI of 50 percent or less, thereby preventing loans with excessive DTI ratios from gaining QM status. These levels align well with prudent industry practices and the Federal Housing Finance Agency’s and the Bureau’s own research on mortgage loan performance.⁴

ICBA appreciates the opportunity to comment on the proposed delay of the mandatory compliance date of the General QM Loan Definition. ICBA supports that delay and urges the Bureau to reexamine and repropose the General QM Loan Definition Rule as outlined above. We look forward to working with the Bureau as this process moves forward. Please direct any questions regarding this letter to the undersigned at ron.haynie@icba.org.

Sincerely,

³ <https://www.corelogic.com/blog/2019/07/expiration-of-the-cfpbs-qualified-mortgage-gse-patch-part-1.aspx>

⁴ <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/4Q2020FPR.pdf> p.4

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