

August 10, 2020

Via Electronic Submission

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20052

Re: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date, Docket No. CFPB-2020-0021

Dear Director Kraninger:

U.S. Mortgage Insurers (USMI)¹ represents America’s leading providers of private mortgage insurance (MI). Our members are dedicated to a housing finance system backed by private capital that enables access to prudent and sustainable mortgage finance for borrowers while also protecting Fannie Mae and Freddie Mac (the GSEs) and the American taxpayer. The MI industry has more than six decades of expertise in underwriting and actively managing mortgage credit risk, and our member companies are uniquely qualified to provide insights on federal policies concerning underwriting standards for the conventional mortgage market, especially given our experience balancing prudent underwriting with access to affordable mortgage credit.

USMI appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (Bureau) Notice of Proposed Rulemaking (NPR)² regarding the Extension of the Sunset Date for the Temporary GSE Qualified Mortgage (QM) definition. This is an important rulemaking that will work in tandem with the Bureau’s proposed rule to amend the General QM definition³ and USMI fully supports a smooth transition to a well-calibrated QM definition that promotes prudent underwriting and facilitates access to affordable conventional mortgages for creditworthy consumers. USMI and other housing finance stakeholders recognize that changes to the General QM definition will broadly inform underwriting standards and policies across the mortgage market and will have a significant impact on the number and profile of borrowers served by the conventional mortgage market.

Background

The Bureau’s 2013 Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule)⁴ created a Temporary GSE QM category for mortgages that: (1) comply with statutory product restrictions, including a points and fees limit⁵; and (2) are eligible for purchase or guarantee by the GSEs. This QM category became known as the “GSE Patch” and was scheduled to expire the earlier of: (1) the GSEs exiting

¹ USMI’s membership comprises the following private mortgage insurance companies: Essent Guaranty, Inc.; Genworth Mortgage Insurance Corporation; Mortgage Guaranty Insurance Corporation; national Mortgage Insurance Corporation; and Radian Guaranty, Inc.

² 85 Fed. Reg. 41448 (July 10, 2020).

³ CFPB, Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, 85 Fed. Reg. 41716 (July 10, 2020).

⁴ 78 Fed. Reg. 6408 (January 30, 2013).

⁵ 15 U.S.C. 1639c(b)(2)(A).

conservatorship; or (2) or January 10, 2021. The Bureau believed this sunset date would create “an adequate period for economic, market, and regulatory conditions to stabilize” and a “reasonable transition period to the General QM definition.”⁶

For nearly seven years, the GSE Patch has served its intended purpose of maintaining credit availability in the conventional mortgage market. According to data from the Bureau and Federal Housing Finance Agency (FHFA), approximately 957,000 mortgages – or 16 percent of all closed-end first-lien residential mortgage originations – in 2018 fell outside the General QM loan definition but received QM status due to the GSE Patch.⁷ These borrowers only had access to financing in the conventional market due to the existence of the GSE Patch.

Expiration of the GSE Patch & Implementation of the New General QM Definition

The NPR would modify the sunset date for the GSE Patch such that its expiration would be the earlier of: (1) the GSEs exiting conservatorship; or (2) the effective date of the General QM final rule. The Bureau has indicated that it “does not intend to issue a final rule amending the General QM loan definition early enough for it to take effect before April 1, 2021” based on the proposed “six-month interval between Federal Register publication of a final rule and the rule’s effective date.”⁸

Recommendation

Consistent with the fact that the GSE Patch was created as a temporary QM category, USMI has strongly supported moving to a QM definition that can be applied consistently throughout the mortgage market. The GSE Patch has played a critical role in maintaining access to mortgage credit and it is paramount that the Bureau provide a smooth transition from its expiration to the new General QM definition. USMI recommends that the Bureau set the sunset date for the GSE Patch to be at least six months after the effective date of the finalized General QM definition rule.

In order to maximize the balance between access to credit, consumer protections, and sustainable homeownership, it is critical that housing industry stakeholders have sufficient time to fully understand and implement a new General QM standard. Depending on the complexity of the finalized revisions to the General QM definition, the significance of the penalties for a violation of the amended ATR/QM Rule, and the large number of mortgage industry participants (lenders, brokers, MIs, warehouse lenders, etc.) that will need to update their operations and systems, USMI recommends a six-month overlap period to mitigate issues associated with implementing a new General QM standard. During the six-month period, mortgage lenders should be permitted to use either the GSE Patch or the new General QM definition, such that a loan meeting either standard would qualify as a QM. This would afford industry participants an appropriate amount of time to develop, test, and implement new models and business operations/processes and facilitate a smooth transition to the new General QM framework. Further, a six-month overlap period would reduce compliance issues that could arise with a singular date that ends the GSE Patch and makes the new General QM definition effective. Specifically, the overlap period would fix the regulatory gap caused by using the mortgage consummation date for the GSE Patch and the loan application date for the proposed General QM definition.

⁶ 78 Fed. Reg. 6534 (January 30, 2013).

⁷ 84 Fed. Reg. 37159 (July 31, 2019). The Bureau estimated that 616,000 of the loans were for home purchase and 341,000 were refinance loans.

⁸ 85 Fed. Reg. 41456 (July 10, 2020).

Further, due to the ongoing COVID-19 pandemic, mortgage market participants, consumers, and the economy as a whole are grappling with an unprecedented level of uncertainty. Following the enactment of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act)⁹, industry is working hard to support homeowners directly and indirectly affected by COVID-19, especially through the implementation of broad nationwide mortgage relief for homeowners with mortgages backed by the GSEs. Due to the extensive scope of the pandemic and the financial services industry’s appropriate focus on responding to the economic and health fallout from COVID-19, USMI believes that a six-month overlap period would promote an orderly implementation period for the new General QM framework while continuing to assist homeowners throughout the country.

Thank you again for the opportunity to comment on the Extension of the Sunset Date for the GSE Patch and your consideration of our recommendation. USMI and our member companies appreciate the Bureau’s thorough review of this very important issue and we look forward to a continued dialogue as the Bureau proceeds with finalizing and transitioning to a new General QM definition.

Questions or requests for additional information may be directed to Lindsey Johnson, President of USMI, at ljohnson@usmi.org or 202-280-1820.

Sincerely,



Lindsey D. Johnson
President
U.S. Mortgage Insurers

⁹ Pub. L. 116-136 (March 27, 2020).