



MORTGAGE BANKERS ASSOCIATION

April 5, 2021

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

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

Re: Proposed Rule: General QM Loan Definition; Delay of Mandatory Compliance Date
Docket No. CFPB-2021-0003; RIN 3170-AA98

Dear Acting Director Uejio:

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule to delay the mandatory compliance date for the General Qualified Mortgage (QM) Final Rule. While we commend the Bureau for its willingness to take proactive steps to mitigate the effects of the COVID-19 pandemic on the housing finance system, we do not support the proposal to delay the General QM Final Rule's mandatory compliance date, as it will not expand access to credit and will inject considerable uncertainty into the housing market.

I. Overview

The General QM Final Rule effectively balances the Bureau's relevant statutory goals of facilitating broad access to affordable mortgage credit and ensuring consumers receive mortgage loans on terms that reasonably reflect their ability to repay the loans.² The new QM

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., 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 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² See Letter from MBA to Kathleen L. Kraninger, Consumer Financial Protection Bureau (Sept. 8, 2020), <https://www.regulations.gov/comment/CFPB-2020-0020-0073>.

framework was developed following a lengthy process that included robust data analysis and broad stakeholder agreement from a wide range of consumer and industry interests.³ This rulemaking followed the letter and spirit of the Administrative Procedure Act (APA) and was conducted transparently. For these reasons, we continue to strongly support the General QM Final Rule.

While the General QM Final Rule went into effect on March 1, 2021, compliance does not become mandatory until July 1, 2021. After previously announcing its intention to reconsider the General QM Final Rule, the Bureau released a proposed rule seeking to delay the mandatory compliance date until October 1, 2022. As the proposed rule explains, the Bureau believes such a delay is necessary “in light of the continuing disruptive effects of the pandemic to help facilitate greater creditor flexibility and expanded availability of responsible, affordable credit options for some struggling consumers by allowing creditors to continue making QMs under the DTI-based General QM loan definition and under the Temporary GSE QM loan definition until October 1, 2022.”

MBA commends the Bureau for its efforts to aid consumers during the pandemic and its willingness to partner with advocates and industry to ensure relief could reach impacted consumers. While MBA understands and shares the Bureau’s desire to assist consumers suffering from the pandemic’s market disruption, we do not believe delaying the mandatory compliance date of the General QM Final Rule is appropriate or would accomplish this goal. Structured as it is, the proposed rule would not meaningfully expand access to QM loans and seems very unlikely to do so in a way that would benefit borrowers impacted by pandemic. As we do not believe the Bureau’s stated rationale for delaying the mandatory compliance date would achieve its desired impact, there would seem to be no justification for extending the existing timeline.

II. The General QM Final Rule Ensures Access To Credit While Retaining Strong Consumer Protections

MBA strongly supports the Bureau’s General QM Final Rule. We applaud the thorough approach taken in the rulemaking process. The price-based QM construct developed by the Bureau reflects a robust framework for assessing borrower ability to repay (ATR) while also providing for broad access to credit. These characteristics explain the General QM Final Rule’s

³ See Letter from MBA, et al., to Kathleen L. Kraninger, Consumer Financial Protection Bureau (Sept. 9, 2019), <https://www.regulations.gov/comment/CFPB-2019-0039-0017>. Joint letter signed by the American Bankers Association, Asian Real Estate Association of America, Bank of America, Bank Policy Institute, Caliber Home Loans, Center for Responsible Lending, Credit Union National Association, Housing Policy Council, The Leadership Conference on Civil and Human Rights, Mortgage Bankers Association, Manufactured Housing Institute, National Association for the Advancement of Colored People, The National Association of Hispanic Real Estate Professionals, National Association of Real Estate Brokers, National Community Reinvestment Coalition, National Council of State Housing Agencies, National Fair Housing Alliance, National Housing Conference, National Housing Resource Center, PNC, Quicken Loans and Wells Fargo.

support among a varied set of stakeholders. The mandatory compliance date should not be delayed.

a. Loan Price is a Strong Indicator of Borrower Ability to Repay

The General QM Final Rule uses loan price, as reflected in a loan's annual percentage rate (APR) relative to the average prime offer rate (APOR) for a similar transaction, to determine eligibility for QM status. In addition to loan price, the General QM loan definition incorporates the original QM limits on product features and points and fees, as well as underwriting provisions related to "consider and verify" requirements for borrower debts and income found in the ATR/QM Rule.

MBA supports the General QM Final Rule's pricing construct, which, compared to the alternatives considered, strikes the best balance between ensuring consumers' ability to repay and ensuring access to responsible, affordable mortgage credit. Loan price is a holistic measure, capturing the borrower's credit score, income, debts, assets, debt-to-income (DTI) ratio, and other strongly correlated indicators of a borrower's risk of default. The Bureau's analysis of loan performance data demonstrates that loan price is a strong proxy for a borrower's ability to repay. Specifically, the Bureau's analysis indicates that for loans within a given DTI ratio range, those with higher rate spreads consistently had higher early delinquency rates, and loans with lower rate spreads had relatively low early delinquency rates.⁴ Across all DTI bins, moreover, loans priced significantly above APOR had early delinquency rates much higher than loans priced below APOR. Similarly, CoreLogic's analysis of 2018 Home Mortgage Disclosure Act (HMDA) data, which reflects significantly greater loan-level detail than pre-2018 HMDA data, including rate spreads and DTI ratios, found "notable increases in loan delinquency as rate spreads increased[,] with each higher rate spread bin corresponding with an increase in early delinquency rates."⁵ Given that early delinquency captures consumers' difficulty making required payments, this rate spread data suggests a pricing approach provides a strong indicator of ability to repay.

b. The Price-Based Standard Provides Broad Access to Credit

The General QM Final Rule furthers the statutory goal of promoting broad access to affordable credit. The price-based QM framework will accommodate the large market segment served by the Temporary Government-Sponsored Enterprise (GSE) QM loan definition, commonly referred to as "the GSE Patch." This was convincingly demonstrated in the preamble to the General QM Final Rule, which concluded that the likely size of the QM market under the price-based General QM definition would exceed the cumulative size of the

⁴ 85 Fed. Reg. 86308, 86323-86234 (Dec. 2020).

⁵ See Archana Pradhan & Pete Carroll, Expiration of the CFPB's Qualified Mortgage (QM) GSE Patch – Part V, CoreLogic Insights Blog, (Jan. 13, 2020), <https://www.corelogic.com/blog/2020/1/expiration-of-the-cfpbqualifiedmortgage-qm-gse-patch-part-v.aspx>.

QM market under Temporary GSE QM loan definition and the DTI-based General QM loan definition.⁶ The Bureau also determined that the price-based General QM loan definition would expand access to credit for underserved market segments, including low-income and minority consumers. Specifically, the Bureau estimated that “96.8 percent of conventional purchase loans to minority consumers would receive QM status under the final rule, compared to 94.9 percent under the current rule with the Temporary GSE QM loan definition and the General QM loan definition with a DTI limit of 43 percent[.]”⁷

The use of loan price, which is a product of multiple factors (*e.g.*, credit score, employment history, assets, etc.), rather than a single metric such as DTI ratio, allows room for innovation in mortgage underwriting. Using innovative approaches to assess repayment ability will allow lenders to expand access to credit, including to currently underserved populations.⁸ The pricing threshold would require disciplined risk management associated with any innovation in the QM market, as pricing would be limited by the rate spread threshold at 2.25 percentage points over APOR while also requiring all of the QM product feature limitations to be met.⁹ In this way, the capacity for innovation does not erode the pricing construct’s ability-to-repay protections.

c. The New General QM Definition Received Broad Stakeholder Support

The new General QM Final Rule is broadly supported by stakeholders representing all segments of the financial ecosystem. A variety of interested parties, including creditors, industry groups, consumer advocates, research centers, and individuals, expressed support for a move from a DTI-based General QM loan definition to one based on pricing.¹⁰ Stakeholders voiced agreement with the Bureau’s analysis showing that loan price is a strong

⁶ The Bureau estimated that the Temporary GSE QM loan definition and the General QM loan definition (43 percent DTI limit) resulted in QM coverage, either safe harbor QM or rebuttable presumption QM, for 95.8 percent of the conventional purchase market. This was less than the 96.1 percent coverage which would have resulted under the price-based QM framework adopted in the General QM Final Rule. *See* 85 Fed. Reg. 86308, 86327 (Dec. 2020).

⁷ 85 Fed. Reg. 86308, 86337 (Dec. 2020).

⁸ *E.g.*, Emerging technology has the potential to more accurately assess consumers’ ability to repay using non-traditional sources such as bank account data, through which the lender can identify the source and frequency of recurring deposits and payments and derive remaining disposable income. 85 Fed. Reg. 86308, 86321 (Dec. 2020).

⁹ The statute prohibits certain features, including: negative amortization, interest-only payments, loan terms greater than 30 years, and points and fees greater than 3 percent of the loan amount. It also requires that loans be underwritten using a fully amortizing payment. *See* 15 U.S.C. 1639c(b).

¹⁰ Bureau of Consumer Fin. Prot., Ability to Repay and Qualified Mortgage Assessment Report (Jan. 2019), appendix B, https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessmentreport.pdf (Assessment Report); 85 Fed. Reg. 86308, 86215(Dec. 2020); *See* Eric Stein & Michael Calhoun, *A Smarter Qualified Mortgage Can Benefit Borrowers, Taxpayers, and the Economy*, (July 2019), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-a-smarter-qualified-mortgage-july2019.pdf>.

indicator of consumers' ability to repay and that a price-based QM framework would expand access to credit for certain underserved market segments, such as low-income and minority consumers.

III. The Rulemaking Process Was Lengthy and Transparent

In developing the General QM Final Rule, the Bureau fulfilled its responsibilities under the APA. Section 553 of the APA requires that an agency provide notice that it intends to promulgate a rule by publishing a notice of proposed rulemaking and provide a reasonable opportunity for interested parties to comment on the proposed rule.¹¹ The agency is required to review the public comments received and respond to any significant comments. In general, the process concludes when the agency publishes the final rule in the Federal Register.

Clearly, the lengthy, deliberate rulemaking process used to develop the General QM Final Rule satisfies the APA's requirements. In the years preceding the rule's issuance, the Bureau solicited and received substantial public and stakeholder input, including as part of the ATR/QM Rule's "Section 1033" assessment, the Bureau's 2017 request for information initiative, the July 2019 advanced notice of proposed rulemaking, and, most recently, during the proposed rule phase in June 2020. During the rulemaking process, the Bureau received over 500 comments from interested parties including creditors, industry groups, consumer advocates, and academic researchers. The Bureau's final rule was responsive to these comments. The rulemaking made extensive use of internal and external data to justify the decision to adopt a price-based QM framework.

The lengthy and transparent process the Bureau underwent to promulgate these QM standards should not be taken lightly. The Bureau's final proposal was lauded by broad cross-sections of stakeholders and garnered bipartisan support in Congress.¹²

IV. Proposed Rule to Delay the General QM Final Rule's Mandatory Compliance Date

The Bureau proposes to delay the General QM Final Rule's mandatory compliance date based on concerns that market disruptions caused by the COVID-19 pandemic may reduce consumer access to responsible, affordable mortgage credit. Given this risk, the Bureau seeks to provide creditors with maximum QM flexibility, believing that with more QM options, creditors will be in a better position to assist consumers. The Bureau shows particular concern for consumers who have suffered an income disruption due to the pandemic as well as creditworthy consumers who, due to the pandemic's market effects, may otherwise have diminished access to credit. To promote the desired QM flexibility, the proposed rule would,

¹¹ 5 U.S.C. § 553 (b)-(c).

¹² See Letter from United States Senators Mark Warner and Michael Rounds to Director Kathleen L. Kraninger, Consumer Financial Protection Bureau (Nov. 18, 2020), <https://www.regulations.gov/comment/CFPB-2020-0020-0090>.

in addition to the current price-based General QM loan definition, allow creditors to originate QM loans under the original DTI-based General QM loan definition and the Temporary GSE QM loan definition for an extended period of time. These additional QM options would remain available until October 1, 2022.

a. Proposed Rule Would Not Meaningfully Expand QM Market

As explained in the proposed rule, the Bureau believes that retaining the original DTI-based General QM loan definition and the Temporary GSE QM loan definition would provide creditors with greater flexibility to accommodate consumers impacted by pandemic-driven market disruption. The Bureau fails to provide supporting data or evidence for this assertion, and the extent to which consumer access to credit would be broadened would be minimal, if at all.

i. Temporary GSE QM

Much of the Bureau's rationale for postponing the mandatory compliance date rests on the Temporary GSE QM. Given the GSE purchase restrictions found in the revised Senior Preferred Stock Purchase Agreements (PSPAs) governing the Treasury Department's capital support of Fannie Mae and Freddie Mac, which will have the practical effect of eliminating the GSE Patch as of July 1, 2021, we believe this reliance is misplaced.

While under conservatorship, GSE operations remain subject to various restrictions, including those laid out in the PSPAs for Fannie Mae and Freddie Mac. The recently revised PSPAs impose specific limits on the types of loans the GSEs can purchase. Importantly, these limits also define the parameters of the Temporary GSE QM, which extends qualified mortgage status to "loans eligible to be purchased or guaranteed by either Fannie Mae or Freddie Mac[.]"

Beginning on July 1, 2021,¹³ the current terms of the PSPAs require the GSEs to establish a program for purchasing loans that meet the QM definition in 12 CFR § 1026.43(e)(2) (General QM), 12 CFR § 1026.43(e)(5) (Small Creditor QM), 12 CFR § 1026.43(e)(6) (Temporary Small Creditor Balloon QM), 12 CFR § 1026.43(e)(7) (Seasoned QM), or 12 CFR § 1026.43(f) (Rural/Underserved Small Creditor Balloon Payment QM).¹⁴ Thus, based on the text of the revised PSPAs, it appears that the GSEs no longer will be permitted to purchase loans outside

¹³ Arguments that the expiration of the QM Patch should be delayed because the PSPAs may be changed in the future are unpersuasive and contrary to the spirit of the APA. As of the date of this letter, there is no indication that the PSPAs will be changed and, as such, commenters must engage with the proposal assuming the impact of the PSPAs as currently structured.

¹⁴ The PSPAs also allow the GSEs to purchase various loans that are outside the QM framework (e.g., certain reverse mortgages, bridge loans, etc.). See Senior Preferred Stock Purchase Agreements between Treasury and each of Fannie Mae and Freddie Mac (Jan. 14, 2021) <https://home.treasury.gov/news/press-releases/sm1236>.

of the General QM definition, or other specified non-QM loan purposes, beginning on July 1, 2021. From the creditor perspective, this means that to originate a Temporary GSE QM to be sold to the GSEs on or after July 1, 2021, a creditor must make a loan that satisfies the requirements of one of the QM categories listed in the PSPA.¹⁵

Given that the restrictions in the PSPAs prohibit the GSEs from purchasing loans under their own defined QM, an extension of the GSE Patch by the Bureau would have no impact on the parameters of QM lending. Regardless of whether the GSE Patch is available under the Bureau's rules, creditors wishing to sell loans to the GSEs must originate loans that satisfy the criteria of one of the existing QM types—i.e., the General APR/APOR QM, Small Creditor QM, Temporary Small Creditor Balloon QM, Seasoned QM, or the Rural/Underserved Small Creditor Balloon Payment QM.

Many of the justifications offered for the proposed rule concern the need to preserve the GSEs' ability to mitigate the pandemic's effects on access to credit. The Bureau suggests, for example, that allowing the Temporary GSE QM to expire on July 1, 2021 "would limit the ability of the GSEs to originate new loans[.]" As previously explained, the GSE Patch is currently defined by the GSE's freedom to set underwriting criteria that are deemed QM, and this freedom will end very shortly due to the PSPA amendments. The existence of the Temporary GSE QM, therefore, will not impact the loans purchased by the GSEs, as the new General QM definition effectively will "replace" the Patch.

Similarly, the Bureau claims that extending the Temporary GSE QM is necessary to ensure the GSEs' "flexibility to develop new refinance programs to address emerging consumer needs during a period of heightened market uncertainty" and that allowing the Temporary GSE QM to expire would "impair FHFA and the GSEs from exercising the flexibility to tailor existing programs to meet future market changes specific to the COVID-19 pandemic[.]" Such arguments are speculative and do not explain why the Bureau could not use its exemption authority if necessary.¹⁶

¹⁵ Given that the PSPAs restrict what can be purchased by the GSEs, it is reasonable to expect that creditors originating loans to sell to the GSEs will need to begin transitioning their processes towards originating loans that comply with the PSPAs' restrictions well before July 1, 2021.

¹⁶ The Bureau also does not fully explain why such a program would help consumers during a period of both extremely low interest rates and robust appreciation in home prices. Previous such programs would help consumers severely underwater in their loan-to-value (LTV) ratio lower their payments by refinancing to a lower fixed interest rate at a higher LTV ratio than typically acceptable. Neither variable—a markedly higher interest rate for a consumer who is current on his or her mortgage or an extremely high LTV ratio—seems to be broadly likely in the immediate future. Consumers impacted by the pandemic who are unable to refinance due to lost income or missed payments, which is far more likely, will be offered loan modifications that are not covered by an origination-focused QM rule. While regional fluctuations or worsening economic conditions are of course possible, their theoretical possibility is not a persuasive reason for delaying compliance with a final rule. Changes in economic circumstances may result in the need to revisit any rule that any regulatory agency sets forth, but the possibility, unsupported by analysis or data, that they may occur is not a reason for delaying the implementation of a well-promulgated, broadly supported rulemaking.

Any arguments that a delay in the mandatory compliance date will provide creditors with more implementation time are unpersuasive in light of the changes to the PSPAs. As noted, those loans will need to comply with one of the existing QM definitions in order to be saleable to the GSEs as of July 1, 2021. Thus, while it is currently unclear exactly what the GSEs will require, it is most likely that lenders that wish to sell loans to the GSEs will need to meet the requirements of the new General QM standard.

Indeed, in light of the fact that the General QM is going to be functionally effective and binding, we encourage the Bureau to clarify aspects of the General QM Final Rule in response to lender or vendor questions immediately rather than delay the publication of such information.

ii. DTI-based General QM

Given that the GSE purchase restrictions in the PSPAs effectively will eliminate the Temporary GSE QM, the proposed rule's effect on the QM market would be limited to extending the DTI-based General QM loan definition until October 1, 2022. If finalized as proposed, creditors could originate loans under both the DTI-based General QM loan definition and the price-based General QM loan definition. Thus, when weighing whether the proposed rule is capable of achieving its intended goal of mitigating the pandemic's impact on credit access, the relevant consideration is whether the DTI-based General QM loan definition is likely to expand access to credit beyond what would otherwise be available under the price-based General QM definition.

The explanations and supporting data presented with the proposed rule are insufficient to support this determination. Unlike the recent General QM rulemaking, where the Bureau's rationale to transition to a price-based QM framework was clearly described and thoroughly supported by data, the proposal to delay the mandatory compliance date is largely unsupported. Absent supporting data, it remains unclear how extending the DTI-based General QM will broaden the QM market in a way that improves creditors' ability to accommodate consumers struggling due to the COVID-19 pandemic. While allowing creditors to originate loans under an additional QM category will "provide additional flexibility to creditors originating QM loans[,]” the number of consumers who would benefit from such flexibility is likely very low. Few consumers with DTI ratios below 43 percent receive loans

with rate spreads greater than 225 basis points.¹⁷ Compliance considerations cannot explain how the DTI-based General QM loan definition, with its relatively burdensome Appendix Q requirements, would be likely to expand access to credit. Finally, the Bureau does not explain how borrowers impacted by the pandemic—and thus likely to have suffered lost income, disruptions in income, or increased debt loads—would benefit by extending a path to qualification that is based on DTI ratio and requires extensive documentation of income.

b. The Bureau has Failed to Justify the Proposed Rule

The amendments to the PSPAs were put in place and publicly known before the Bureau's proposed rule to delay the mandatory compliance date, yet the Bureau fails to address the impact they will have on the GSE Patch in any meaningful way beyond a concession that the impact of the proposed delay "may be smaller." As explained above, these revisions will dramatically lessen—indeed, may negate almost entirely—the "benefit" of extending the GSE Patch for the vast bulk of the current GSE production.

Other justifications offered to support the proposal to delay the General QM Final Rule's mandatory compliance date are not compelling. The proposed rule, for example, mentions concerns related to consumers who may be unable to afford their mortgage payments once the pandemic-related payment forbearances and foreclosure moratoria expire. It is suggested that the delay is needed to protect consumers who need to sell their homes by broadening the QM market, thereby ensuring that consumers faced with the need to sell their homes have access to home buyers. This argument is unpersuasive. First, all the arguments above with respect to the GSE Patch apply, so the population of purchasers is likely to be identical if the rule is not delayed. Second, at present and for the foreseeable future, the supply of homes available on the residential real estate market is far below the level needed to meet demand.¹⁸ There will be no shortage of qualified borrowers.

¹⁷ Using data gathered before the pandemic, the preamble to the General QM Final Rule estimated that "25,000 low-DTI conventional loans which are QM under the baseline will fall outside the amended QM definition under this final rule, due to exceeding the pricing thresholds[.]" While some of these consumers may be unable to obtain mortgage financing, others "[m]ay instead obtain FHA loans, likely paying higher total loan costs[;]" "obtain General QMs priced below 2.25 percentage points over APOR due to creditor responses" to the General QM Final Rule; or "obtain loans under the Small Creditor QM definition." 85 Fed. Reg. 86308, 86390-86391 (Dec. 2020).

¹⁸ See Olick, Diana. "Existing home sales rise slightly in January, but record low supply weighs on market." CNBC (Feb. 19, 2021) www.cnbc.com/2021/02/19/existing-home-sales-rise-slightly-in-january-but-record-low-supply-weighs-on-market.html. ("There were 1.04 million homes for sale at the end of January, a 26% drop from a year ago. At the current sales pace, there is now a 1.9-month supply, the lowest since the Realtors began tracking this metric in 1982. One year ago there was more than a 3-month supply."). See also Dunn, Meredith. "Economists' Outlook: Inventory and Months' Supply." National Association of Realtors (Jan. 22, 2021) www.nar.realtor/blogs/economists-outlook/inventory-and-months-supply. ("In December 2020, inventory was at 1,070,000 active properties listed on the market. This is down 16.4% from November 2020 (1,280,000). Compared with December of 2019 (1,390,000), inventory levels were down a marked 23.0%. This is a record-setting low since 1999, when NAR started tracking the data.")

Further, these and various other justifications mentioned in the proposed rule are based on the assumption that extending the DTI-based General QM loan definition and the Temporary GSE QM loan definition will meaningfully expand consumer access to QM lending beyond what would be available under the price-based General QM loan definition. As the previous section explains, this assumption is unsupported. The proposed rule's effect on the QM market would be marginal, only expanding access to credit with respect to consumers who could qualify under the DTI-based General QM loan definition, but not the new General QM loan definition. This fact undermines the rationale used to justify delaying the mandatory compliance date.

c. Unwarranted Delay Will Discourage Innovation and Increased Consumer Choice

With its proposal to delay the General QM Final Rule's mandatory compliance date, the Bureau casts considerable uncertainty over the mortgage market. Prior to the proposed rule's publication, it was understood that the Temporary GSE QM would be replaced by a price-based QM construct on July 1, 2021. This knowledge allowed market participants to plan and develop systems to accommodate the transition, including by developing new approaches to reach borrowers based on a framework that did not depend entirely on either a restrictive DTI-based approach or the GSEs' proprietary underwriting systems. The proposed rule eliminates this certainty by making it unclear how long the price-based QM will remain in effect and, if it is replaced, what alternative the Bureau ultimately will adopt.¹⁹

While it is unclear precisely how the market will respond to this uncertainty, it is reasonable to expect that participants will be hesitant to invest in programs that depend on a price-based QM construct. At the very least, such a response would tend to undermine the innovation-encouraging effects of a price-based QM framework, thereby stifling the General QM Final Rule's potential to expand access to credit through innovation, particularly for applicants with non-traditional income and limited credit history. By clouding the future of the QM rule, the proposed rule also serves to discourage the development of private sector options for non-QM lending. Here too, the proposed rule may have implications that, contrary to the Bureau's intent, *negatively* affect access to credit.

d. The Bureau Should Not Create Precedents that Negatively Impact Future Rulemakings

Finally, we note that, while not mentioned in the proposal, delaying this rulemaking simply to provide a future confirmed Director with "optionality" is both unnecessary and may have

¹⁹ See Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule, Consumer Financial Protection Bureau (Feb. 23, 2021), https://files.consumerfinance.gov/f/documents/cfpb_qm-statement_2021-02.pdf.

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unwanted effects.²⁰ The Director of the CFPB has the authority to initiate any rulemaking that he or she may want, consistent with the requirements of the CFPB’s delegated statutes and the APA. Nothing bars a future Director from revisiting the QM framework.

While we can perhaps understand the impulse to deter “midnight” rulemakings late in an outgoing Director’s term, the General QM rule definitively is not such a rule. Delaying this rule—which featured *years* of process, multiple opportunities for comment, and broad advocate-industry alignment—risks creating the precedent that any act by a prior Director that has not taken full effect before a change in administration presumptively will come under suspicion and will not be allowed to take effect. Such a precedent destabilizes financial markets that rely on finality to make compliance investments, undermines good faith engagement in the regulatory process, and creates perverse incentives to inappropriately “rush” through rulemakings early in a Director’s tenure.

* * *

For the reasons outlined above, MBA opposes the Bureau’s proposal to delay the General QM Final Rule’s mandatory compliance date. If a delay is adopted, it should be limited to the minimum amount of time needed to resolve any uncertainty arising from the proposed rule and disruption to the market. Should you have questions or wish to discuss further, please contact Pete Mills, Senior Vice President of Residential Policy and Member Engagement, at (202) 557-2878 and pmills@mba.org or Justin Wiseman, Associate Vice President, Managing Regulatory Counsel, Public Policy and Industry Relations, at (202) 557-2854 and jwiseman@mba.org.

Sincerely,



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

²⁰ See Acting Director David Uejio’s February 4, 2021 blog post describing his vision for the CFPB’s Division of Research, Markets, and Regulations. www.consumerfinance.gov/about-us/blog/the-bureau-is-working-hard-to-address-housing-insecurity-promote-racial-equity-and-protect-small-businesses-access-to-credit/.