

September 8, 2020

Submitted Electronically

Comment Intake—General QM Amendments
Bureau of Consumer Financial Protection,
1700 G Street NW,
Washington, D.C. 20552.

Re: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 220 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Bureau of Consumer Financial Protection's (CFPB) proposed rule to amend the General QM loan definition in Regulation Z (proposed rule)

Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay certain residential loans. Loans that meet Regulation Z's requirements for "qualified mortgages" obtain certain protections from liability. One category of qualified mortgage (QM) applies to loans that are eligible for purchase or guarantee by either the Fannie Mae or Freddie Mac (GSEs). Under Regulation Z, this category of QM (Temporary GSE QM) is scheduled to expire no later than January 10, 2021. In a separate proposal released simultaneously with the proposed rule, CFPB has proposed to extend the Temporary GSE QM definition to expire upon the effective date of the proposed rule, which would implement amendments to the General QM loan definition.

WBA appreciates CFPB's efforts to acknowledge and address the lapse of the Temporary GSE QM and, through the proposed rule, facilitate a smooth and orderly transition. The expiration is expected to affect a sizable segment of mortgage loan originations. In the proposal, CFPB estimates that approximately 957,000 loans, being 16 percent of all closed-end first-lien originations in 2018, would be affected by the expiration of the Temporary GSE QM category expiration. An additional, smaller number of loans that currently qualify as Temporary GSE QM loans may not fall within the General QM loan definition after expiration of the Temporary GSE QM loan definition because the method used for verifying income or debt would not comply with appendix Q. Expiration of the Temporary GSE QM definition would, absent changes to the General QM definition, create significant challenges for consumers with total monthly debt to total monthly income (DTI) ratios above 43 percent. At a minimum, the cost of loans that would have previously been eligible under the temporary GSE QM would increase significantly.

Overall, WBA supports CFPB's efforts to amend the General QM category, but encourages adoption of a final rule that is mindful the broader impact, based on diverse markets, institutional practices, resources, and burden, that any amendments to the definition of General QM represents. Wisconsin banks have provided varying opinions on certain aspects of the rule.

WBA presents those opinions in this comment in order to assist CFPB in understanding the differing impacts of the proposed rule and ultimately, recommends a hybrid approach to the revised General QM definition, which would provide a combination of a DTI limit and a price-based threshold.

Price-Based Definition

CFPB has proposed a price-based General QM definition because it concludes that a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone. WBA has received feedback from its membership both in support of, and opposed to, replacement of the DTI limit with a price-based threshold. Support of the proposed rule's price-based threshold includes:

- DTI is not an accurate representation of ability to repay and should be eliminated. In some experiences, higher-income individuals can make payments with higher DTIs, while lower income individuals struggle at 43%.
- The price-based definition provides welcome ability for financial institutions to have the tools, and establish appropriate standards and guidelines under a flexible reasonableness standard.
- A specific DTI limit does not provide an accurate picture of the consumer's ability to repay, and an alternative method is necessary.

Members who would prefer to retain a DTI threshold have commented:

- A clear threshold is preferred in order to maintain assurances of compliance and mitigate the potential for litigation. Significant changes will also result in confusion, incur costs, and increase overall burden.
- Concern exists over the ability of a price-based threshold to properly reflect a realistic ability to repay.
- Price is too easily manipulated to judge ability to repay. QM repayment should be based on income and debt service obligations.

WBA believes that CFPB's overall objective can be achieved, and the discrepancies between opinions be rectified, through a hybrid approach. Under such an approach, a combination of a DTI threshold and a price-based threshold would be used. CFPB has proposed examples of multiple, possible hybrid approaches in the proposed rule. WBA recommends a hybrid approach that would preserve a financial institution's ability to operate, in major respects, under the existing DTI threshold requirements but would also permit financial institutions that choose to operate under the proposed price-based method to do so. Specifically, CFPB has suggested the possibility of a hybrid approach which imposes a DTI limit on all General QM loans, but allows higher DTI ratios for loans below a set pricing threshold. WBA recommends a final rule that incorporates a hybrid approach based on this model.

If CFPB decides to maintain a specific DTI threshold, either altogether, or through a hybrid approach, WBA members have generally been in support of increasing the range somewhere between the 45% to 48%, in support of amounts suggested in the proposed rule. It is worth mentioning that some Wisconsin banks have expressed support of maintaining a rate of 43%, and even dropping the ratio as low as 40%. For this reason, WBA again recommends a hybrid approach following the example discussed above. Such an approach would permit financial

institutions to rely upon clear, consistent standards based upon a specific threshold, but also permit some lower-priced loans with higher DTI ratios to achieve QM status.

Appendix Q

Similar to the discussion regarding replacement of the DTI threshold with a price-based threshold above, Wisconsin banks have expressed varying opinions regarding removal of appendix Q. Overall, WBA supports the removal of appendix Q. In larger part, based on feedback which has suggested that the requirements of appendix Q are unclear, outdated, and have in some cases restricted access to consumer credit. However, as discussed below, there are merits to appendix Q which are worth preserving in some form.

Appendix Q contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. In order to prevent uncertainty that may result from the removal of appendix Q, the rule would clarify requirements to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. Loans under the Temporary GSE QM depend on eligibility to be purchased by the GSEs. Generally, this includes recommendation from a GSE underwriting system, agency guidelines, written agreements between the GSE and the creditor, or loan waivers. These loans must be underwritten using the required guidelines of the entities. Under the proposal, lenders must still consider income, assets, debt, etc. and retain documentation of underwriting factors in ATR determination. Without the ability to rely on these standards to attain QM qualification, or appendix Q, some challenges will remain in terms of fitting these loans within the proposed General QM definition. For this reason, some Wisconsin banks have expressed concern over the elimination of appendix Q.

Specifically, some Wisconsin banks are concerned that removal of appendix Q as a standard for QM qualification would cause uncertainty. For example, one Wisconsin bank recommends retaining appendix Q, or another guide, in order to establish a starting point. Another has indicated a need to maintain specific underwriting standards and financial ratios that set an appropriate level of debt for a borrower and enable consumers to have income after housing debt for retirement savings, family expenses, and regular savings.

The common theme on both sides is fear of uncertainty. For that reason, in addition to the above discussion, WBA supports removal of appendix Q in its current state, but we would recommend it be revised, supplemented, or replaced with reasonable alternatives that allow for more flexibility, such as the GSE or FHA standards for verifying income and debt and provide for a means toward greater certainty of QM status.

Safe Harbor and Rebuttable Presumption

The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

Loans would also continue to be subject to current thresholds that distinguish the safe harbor from rebuttable presumption QMs. As such, loans that otherwise meet the General QM loan definition and for which the APR exceeds APOR by 1.5 or more percentage points (but by less than 2 percentage points) as of the date the interest rate is set would receive a rebuttable presumption of compliance with the ATR provisions. CFPB has also proposed a special rule for

loans where the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. For such loans, the creditor would be required to determine the APR, for purposes of determining whether a QM under § 1026.43(e)(2) is a higher-priced covered transaction, by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

WBA generally approves of the proposal's retention of the safe harbor and rebuttable presumption protections, and applicable thresholds. However, CFPB has requested comment on whether the rule should retain the current thresholds or whether it should adopt higher or lower safe harbor thresholds. WBA recommends that CFPB offer safe harbor treatment to all loans that are below the 2 percent threshold. Additionally, Wisconsin banks have expressed concern that the special rule, as discussed above, would largely be unworkable for adjustable-rate loans. The concern is that the test for APR determination and comparison to APOR would make it generally impossible to attain the safe harbor. WBA is concerned that, given the difficulty of obtaining safe harbor treatment for these types of loans, lenders may avoid making them. Any lenders that choose to do so will be faced not only with the burden of significant systems adjustments, but also the existing burdens presented by the COVID-19 pandemic and upcoming transition from LIBOR to SOFR. As such, WBA recommends that the final rule retain the existing APR calculation rather than adopt the special rule as proposed. If CFPB does proceed with the special rule as proposed, WBA recommends reducing its scope to loans with interest rates set during the first three years.

Conclusion

WBA supports CFPB's proposed rule to amend the General QM category, but recommends adoption of a final rule that has taken into account certain considerations, as discussed above, and recommends adjustments that would permit banks the flexibility to account for risk in a manner appropriate to their lending operation and best assist customers in financing new home purchases while maintaining safe and sound credit practices.

We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Rose Oswald Poels".

Rose Oswald Poels
President/CEO