

September 25, 2020

Submitted Electronically

Comment Intake—Seasoned QM
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):
Seasoned QM Loan Definition; RIN 3170-AA98**

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 create a new category of qualified mortgages for first-lien, fixed-rate covered transactions that meet certain requirements.

The proposed rule would create a new category of qualified mortgage (Seasoned QM) for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. CFPB has stated its primary objective with this proposal is to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions.

Additionally, the proposal aims to encourage creditors to originate more responsible, affordable loans that are not QMs at consummation, and to ensure that responsible, affordable credit is not lost because of legal uncertainty in non-QM status. WBA supports CFPB in its efforts to create a new category of QM and believes the proposed rule would benefit access to credit and retain the consumer safety considerations and legal protections consistent with the purpose of the ATR/QM rules. However, WBA has received feedback indicating that few Wisconsin banks would be able to utilize the rule as proposed. In order to assist CFPB in writing a final rule that will achieve its stated goals, WBA offers the following comments.

Summary of General Comments

In order to be eligible to become a seasoned QM a loan must:

- Be secured by a first lien;
- Have a fixed rate;
- Have regular, fully amortizing periodic payments that are substantially equal in amount (i.e., no negative amortization, interest-only payments, or balloon payments);
- Have a loan term that does not exceed 30 years; and

- Have total points and fees that do not exceed specified limits. The proposed limits on points and fees would be the same as those that apply to other QMs under the ATR/QM Rule.

WBA has spoken with its membership regarding these criteria, and learned that many Wisconsin banks do not, and likely would not, originate loans that would qualify for seasoned QM status. One institution indicated that they might have 2-4 million loans on their books with possibly a handful each year that would qualify. Many have reported that the primary reason they would not keep loans eligible for seasoning under the proposed rule in their portfolio is due to interest rate risk. For example, a loan booked today at 3.25% with rates later rising to 3.5%-4% will result in higher net deposit rates, causing overall liquidity to suffer. For this reason, most, if not all, fixed-rate mortgages are sold to the secondary market. To take that example a step further, concerns exist over potential unintended consequences as a result of loan turnover. A bank that does make loans under the proposed rule's seasoning category may encounter difficulties if a loan is sold due to cash needs, and another pathway to QM is unavailable.

WBA offers these comments in CFPB's contemplation of a final rule that will meet CFPB's goal of providing access to credit for creditworthy consumers whose loans would otherwise fall outside the other QM definitions. Overall, WBA is appreciative of CFPB's efforts to create a new category of QM, and agrees with the premise that loans with sustained and timely mortgage payment histories that confirm reasonable underwriting should be awarded QM status. To that extent, WBA encourages this undertaking and the creation of new tools enabling pathways to QM status.

Additional Comments and Requests for Clarification

CFPB has requested comments suggesting any areas in which commentary may further clarify the proposed general requirements. WBA provides the following comments on aspects of the rule that we believe would benefit from clarity within a final rule.

The proposed rule would disqualify any loan with balloon payments from eligibility for being a Seasoned QM. CFPB has also proposed that any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency would not be counted as part of the seasoning period. Such a loan must undergo a qualifying change, being an agreement entered into during or after a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency that ends any preexisting delinquency and meets certain other conditions to ensure the loan remains affordable. WBA requests clarity on whether such a qualifying change could include a balloon payment. WBA has found that it has been common for borrowers affected by the pandemic to agree to payment deferrals that could be characterized as a balloon payment. In addition, GSE workout options have included deferment of delinquent amounts to create a balance due at maturity or payoff. Because the proposed Seasoned QM category prohibits balloon payments, WBA recommends a final rule which provides that balloon payments included as the result of a qualifying change does not disqualify the loan from seasoning.

Furthermore, WBA requests that the suspension of the seasoning period during certain temporary payment accommodations be expanded to include accommodations made as the result of financial emergencies that may not be in connection with a disaster or pandemic. In the proposed rule, CFPB expresses concern that temporary payment accommodations entered into for reasons other than disasters or emergencies meeting the definition in proposed §

1026.43(e)(7)(iv)(D) may be a sign of ongoing consumer financial distress that could indicate that the creditor did not make a reasonable assessment of the consumer's ability to repay at origination. As discussed above, CFPB believes it may be appropriate to treat periods of temporary payment accommodation for reasons other than disasters or pandemic-related emergencies as part of the seasoning period. However, CFPB has expressed concern that proposing a broader exclusion from the seasoning period, such as, for example, excluding a period of temporary payment accommodation entered into as the result of financial hardship arising from circumstances not foreseeable at origination, could lead to an uncertain standard whereby financial hardships resulting in temporary payment accommodations would need to be evaluated on a case-by-case basis to determine whether a loan subject to such accommodations could season into a QM.

WBA appreciates CFPB's inclusion of a "pause" during disaster or pandemic-related emergencies. Generally, the proposal adopts this exemption to the seasoning period because CFPB believes that financial hardship experienced as a result of a disaster or pandemic-related national emergency is not likely to be indicative of a consumer's inability to afford a loan at consummation. WBA offers that non-disaster or pandemic related emergencies are similarly not indicative of a consumer's inability to afford a loan at consummation. COVID-19 has caused in a pause and, in some cases, closure of various businesses. This has resulted in borrowers losing employment. This situation is no different than a sudden, and unexpected termination of employment due to other factors. For example, in 2015 Madison's Oscar Mayer plant announced closure of its headquarters, resulting in loss of work for 1,000 employees. Such an event is not indicative of a borrower's inability to afford a loan, and should not jeopardize seasoning of a loan that was otherwise safely underwritten, just as CFPB acknowledges it should not during a pandemic.

Lastly, in order to be eligible for seasoning a loan must be held in portfolio. The proposal would exclude from eligible any loan where legal title to the covered transaction is sold, assigned, or otherwise transferred to another person before the end of the seasoning period. CFPB has proposed two exceptions, but WBA recommends another. Specifically, WBA is concerned that if a loan is pledged, for example, to FHLB, that may be considered an "assignment," potentially jeopardizing the loan's eligibility for seasoning. As such, WBA requests clarification in the final rule that such a pledge would not constitute an assignment.

Conclusion

WBA supports CFPB's proposed rule to create a new category of QM. Overall, WBA appreciates CFPB's efforts to create another pathway to QM safe harbor and believes it will incentivize origination of safe loans that will now carry assurances of compliance. However, WBA submits these comments with requests for clarity along with recommendations for further consideration of a category that includes ARM loans in order to further achieve the proposed rule's objective.

We appreciate your consideration of these comments.

Rose Oswald Poels
President/CEO