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November 25, 2020

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our amended¹ report on a major rule promulgated by the Bureau of Consumer Financial Protection (the Bureau) entitled “Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date” (CFPB-2020-0021). We received the rule on October 20, 2020. It was published in the *Federal Register* as a final rule; official interpretation on October 26, 2020. 85 Fed. Reg. 67938. The effective date of the rule is December 28, 2020.

According to the Bureau, this final rule amends Regulation Z, which, according to the Bureau, requires, with certain exceptions, creditors to make a reasonable, good faith determination of a consumer’s ability to repay any residential mortgage loan. The Bureau stated that loans that meet Regulation Z’s requirements for qualified mortgages (QMs) obtain certain protections from liability. The Bureau explained that one category of QMs consists of loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, government-sponsored enterprises, or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The Bureau further explained that the GSEs are currently under federal conservatorship. According to the Bureau, in 2013 it established this category of QMs (Temporary GSE QM loans) as a temporary measure that would expire with respect to each GSE on the date that GSE exits conservatorship, or on January 10, 2021, whichever comes first.

¹ Upon receipt of documentation from the agency, as discussed further in this report, we are issuing this amended report to revise a statement in the original report, dated November 12, 2020, that the Bureau did not comply with the 60-day delay in effective date requirement of 5 U.S.C. § 801(a)(3)(A).

The Bureau stated that this final rule replaces the January 10, 2021, sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z. The Bureau further stated that the final rule does not amend the provision stating that the Temporary GSE QM loan definition expires with respect to a GSE when that GSE exits conservatorship.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published on October 26, 2020. 85 Fed. Reg. 67938. The *Congressional Record* indicates that the Senate received the rule on November 2, 2020, and that the House of Representatives received the rule on November 16, 2020. 166 Cong. Rec. S6651 (daily ed. Nov. 10, 2020); 166 Cong. Rec. H5866 (daily ed. Nov. 17, 2020). However, the Bureau provided documentation showing that the rule was received by the Senate on October 21, 2020, and by the House of Representatives on October 22, 2020. Email from Senior Counsel, Bureau, to Senior Attorney, GAO (Nov. 5, 2020); Email from Senior Counsel, Bureau, to Senior Attorney, GAO (Nov. 20, 2020) (attachments); Email from Senior Counsel, Bureau, to Senior Attorney, GAO (Nov. 23, 2020) (attachment). The rule has a stated effective date of December 28, 2020. Therefore, based on the Bureau's documentation, the final rule has the required 60-day delay in its effective date.

Enclosed is our assessment of the Bureau's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.



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Enclosure

cc: Christopher Shelton
Senior Counsel
Bureau of Consumer Financial Protection

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
BUREAU OF CONSUMER FINANCIAL PROTECTION
ENTITLED
“QUALIFIED MORTGAGE DEFINITION UNDER THE
TRUTH IN LENDING ACT (REGULATION Z):
EXTENSION OF SUNSET DATE”
(RIN: CFPB-2020-0021)

(i) Cost-benefit analysis

The Bureau of Consumer Financial Protection (the Bureau) considered the benefits, costs, and impacts of this final rule to consumers and to covered persons. The Bureau stated it considered these elements against the baseline in which the Bureau takes no action and the temporary government-sponsored enterprise (GSE) qualified mortgage (QM) loan definition expires on January 10, 2021, or when the GSEs exit conservatorship, whichever occurs first. According to the Bureau, the primary benefit of the rule to consumers is the continued availability of High-debt to total monthly income (DTI) GSE loans during the period of the extension. The Bureau stated the primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating High-DTI conventional QM loans.

Regarding costs of the rule to consumers, the Bureau stated the extension of the temporary GSE QM loan definition could delay the development of the non-QM market, particularly new mortgage products which may have become available if the temporary GSE QM loan definition had been allowed to expire. The Bureau stated that the costs to covered persons are effectively transfers between lenders for the duration of the extension, reflecting reduced loan origination volume for lenders who primarily originate Federal Housing Administration or private non-GSE loans and increased origination volume for lenders who primarily originate GSE loans.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Bureau certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Bureau is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 31, 2019, the Bureau published an advanced notice of proposed rulemaking. 84 Fed. Reg. 37155. The Bureau received 85 comments from businesses in the mortgage industry (including creditors), consumer advocacy groups, elected officials, individuals, and research centers. On June 22, 2020, the Bureau issued an Extension Proposal. The Bureau received

29 comments in response to the Extension Proposal from industry, consumer advocates, and others. The Bureau responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Bureau determined that this final rule does not contain any new or substantively revised information collection requirements other than those previously approved by the Office of Management and Budget (OMB) under OMB control number 3170-0015, which is the Bureau's OMB control number for Regulation Z.

Statutory authorization for the rule

The Bureau promulgated this final rule pursuant to sections 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, and 5581 of title 12, United States Code, and sections 1601 *et seq.* of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, the Bureau is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, the Bureau is not subject to the Order.