

October 29, 2013

Regulations Division, Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Room 10276  
Washington, DC 20410-0500

Re: Docket No. FR-5707-P-01  
Qualified Mortgage Definition for HUD Insured and Guaranteed Single  
Family Mortgages

Dear Sir or Madam,

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Department of Housing and Urban Development's (HUD) proposed rule to define the term "Qualified Mortgage" (QM) for its insured and guaranteed single family mortgages. By way of background, CUNA is the nation's largest credit union trade organization, representing our nation's state and federal credit unions, which serve over 97 million members.

### **CUNA's Views**

In general, CUNA supports HUD's proposed QM definition, especially with respect to designating all Title I, section 184 and section 184a loans as Safe Harbor QMs. CUNA also feels it is appropriate for the agency to not adopt the 43% debt-to-income ratio requirement as part of its QM definition. However, with respect to the FHA Safe Harbor QM threshold, we offer an alternative suggestion to the proposed definition, as more fully discussed below, and urge the agency to consider adopting such alternative when finalizing the rulemaking. Finally, CUNA is concerned that subjecting streamlined refinances to the proposed rule may inhibit credit union lenders from refinancing FHA loans.

### **Discussion**

Section 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) requires HUD, along with the Department of Veterans Affairs, the Department of Agriculture, and the Rural Housing Service to prescribe rules to define the types of loans they insure, guarantee, or administer, as the case may be, that are "qualified mortgages," and revise, add to, or subtract from the statutory criteria used to define a QM. Through this rulemaking, HUD is

proposing to provide a definition of QM that is aligned, to the extent feasible, with the ability-to-repay criteria set out in the Truth in Lending Act (TILA), given the statutory mandates and missions of HUD's mortgage insurance and loan guarantee programs, and would define QM for FHA-insured single family mortgages, section 184 guaranteed loans, and section 184a guaranteed loans.

### **FHA Safe Harbor Threshold**

Under the proposal, it is not entirely clear as to how lenders would combine the annual mortgage insurance premium (MIP) with 1.15% to calculate the FHA Safe Harbor QM threshold. It appears that the agency intends the lender to calculate the sum of the annual MIP rate and 1.15% (e.g.,  $1.35 + 1.15 = 2.50$ ) and then determine whether the loan's APR exceeds the applicable average prime offer rate (APOR) by that amount.

CUNA agrees that basing the APR cap for safe harbor loans on a combination of the annual MIP plus 1.15% may prevent the premiums from pushing the APR for many loans above the safe harbor cap under the CFPB's approach to QMs. However, we encourage the agency to adopt a simpler approach that uses a single percentage point amount (while still taking the MIP into consideration), similar to the CFPB's approach.

Credit union lenders are currently working diligently to program their software and hardware systems, train their staff, and develop policies and procedures relating to the CFPB's ability-to-repay and QM rule which takes effect next January. As part of this process, credit union lenders rely upon certainty in the dimensions of the QM definition, to ensure uniformity in compliance with the overall QM requirements.

Allowing the FHA Safe Harbor QM threshold to potentially fluctuate in relation to the MIP could result in errors by lenders when attempting to comply with the HUD QM requirements. For example, if such a change in the threshold were to occur, then a certain period of time would be required to amend policies and procedures, re-program hardware and software systems, and re-train staff on the new threshold requirements and calculations. During this interim period, it is possible that lenders might have originated loans which they believed to be protected by the FHA QM Safe Harbor, but that were instead subject only to the rebuttable presumption for liability purposes. Credit union lenders rely upon a set mechanism to properly originate a class of loans; therefore, CUNA recommends that the agency consider indexing its safe harbor threshold against a fixed APR amount.

While the safe harbor threshold calculation is important, an even more important issue for credit union lenders is how to determine whether to use the HUD calculation or that of the CFPB's QM rule in their everyday operations. Again, consistency is key for credit union mortgage lenders. If the agency adopts a numeric calculation that differs from that set forth in the CFPB's QM rule, then confusion may ensue, and opportunity for error may exist. As a

worst-case scenario, credit union lenders may decline to offer FHA products and rely upon the conventional loan products that are subject to one standard under the CFPB's QM rule, to avoid potential errors and to ensure compliance. This is of special concern in light of the fact that many credit unions are wary of how their mortgage operations will continue when many of the mortgage rules go into effect next January.

### **Streamlined Refinancings**

Under TILA, HUD has been granted the authority to exempt streamlined refinancings from the income verification requirements of the ability-to-repay rule, as long as the refinancings meet certain requirements.<sup>1</sup> However, HUD intimates that including streamlined refinancings in the proposed QM requirements would meet similar objectives of a broader exemption, as the proposed QM definition would still require these types of loans to meet the three percent points and fees requirements and HUD's existing requirements for streamlined refinances. CUNA believes that by subjecting streamlined refinancings to HUD's proposed rule, this may increase the compliance burdens for credit union lenders, and may impede the ability of credit union lenders to refinance FHA loans.

### **Conclusion**

Thank you for the opportunity to comment on HUD's proposed rule to define the qualified mortgage for the agency's insured and guaranteed single family mortgages. If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6732.

Sincerely,



Jared Ihrig  
Associate General Counsel

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<sup>1</sup> Section 129C(a)(5) of TILA.