Banking and Finance Law Daily Wrap Up, GOVERNMENT SPONSORED ENTERPRISES—CFPB issues proposals to address expiration of GSE Patch, (Jun. 23, 2020)

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The Bureau announced two proposals to address the expiration of the GSE Patch; one would amend the General QM definition and the other would extend the Temporary GSE QM loan definition.

The Consumer Financial Protection Bureau has proposed steps to address the pending expiration of the Government-Sponsored Enterprises Patch (GSE Patch). In one Notice of Proposed Rulemaking (NPRM), the Bureau proposed to remove the general qualified mortgage (General QM) loan definition's 43 percent debt-to-income (DTI) limit and replace it with a price-based threshold. The Bureau proposed a price-based General QM loan definition to replace the current DTI approach because it concluded that a loan's price, as measured by comparing a loan's annual percentage rate (APR) to the average prime offer rate (APOR) for a comparable transaction, is a strong indicator of a consumer's ability to repay and a more holistic and flexible measure of a consumer's ability to repay than DTI alone. Comments on the proposed rule must be received within 60 days after publication in the *Federal Register*. In a second NPRM, the Bureau proposed extending the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition. Comments on the proposed rule must be received within 30 days after publication in the *Federal Register*.

The Bureau announced that it has taken steps to address the pending expiration of the GSE Patch, which is scheduled to expire in January 2021 or when the GSEs exit conservatorship, whichever comes first. The Bureau's ability-to-repay/qualified mortgage rule established a general QM standard for loans where the consumer's DTI ratio is 43 percent or less and created the GSE Patch as a temporary QM definition that provides QM status to certain mortgage loans (even if the DTI ratio exceeds 43 percent) eligible for purchase or guarantee by either of the GSEs. Absent regulatory action, nearly one million mortgage loans would be affected by the expiration of the GSE Patch. Many of these loans would either not be made or would be made but at a higher price.

The first NPRM would amend the General QM definition in Regulation Z—Truth In Lending Act to replace the DTI limit with a price-based approach. A loan would meet the General QM loan definition only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set. Although the proposal would remove the 43 percent DTI limit from the General QM loan definition, the proposal would require that the creditor consider the consumer's income or assets, debt obligations, and DTI ratio or residual income and verify the consumer's current or reasonably expected income or assets and the consumer's current debt obligations, alimony, and child support. 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. The Bureau requested comment on certain alternative approaches that would retain a DTI limit but would raise it above the current limit of 43 percent and provide a more flexible set of standards for verifying debt and income in place of appendix Q. The Bureau proposed that the effective date of a final rule relating to this proposal would be six months after publication in the *Federal Register*.

In the second NPRM, the Bureau proposed to amend Regulation Z to replace the sunset date of the Temporary GSE QM loan definition with a provision that extends the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition. The Bureau did not propose to amend the provision stating that the Temporary GSE QM loan category would expire if the GSEs exit conservatorship.

Response. Senator Sherrod Brown (D-Ohio), Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, issued a statement urging the Bureau to halt the rulemaking, arguing that putting out the proposals in the middle of the pandemic will prevent stakeholders from providing thoughtful comment.

RegulatoryActivity: CFPB FinancialStability GovernmentSponsoredEnterprises InterestUsury Loans Mortgages TruthInLending