Consumer Financial Protection Bureau

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Executive Summary of the December 2020 Amendments to the ATR/QM Rule

On December 10, 2020, the Consumer Financial Protection Bureau (Bureau) issued two final rules amending the Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule). These final rules are:

- General QM Final Rule: The General QM Final Rule replaces the existing 43 percent debt-to-income ratio limit in the General QM definition with price-based thresholds and makes other changes to the ATR/QM Rule as discussed below.

- Seasoned QM Final Rule: The Seasoned QM Final Rule creates a new category of qualified mortgage, the Seasoned QM. The Seasoned QM Final Rule is discussed below.

Background

With certain exceptions, the ATR/QM Rule requires creditors to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan and provides certain protections from liability for residential mortgage loans that meet the ATR/QM Rule's requirements for "qualified mortgages" or "QMs." The ATR/QM Rule also establishes different categories of QMs.

One QM category is the General QM category. Currently, for a residential mortgage loan to fit within the General QM category, the ratio of the consumer's total monthly debt to total monthly income (DTI ratio) must not exceed 43 percent, and the creditor must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the

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This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/, that explains the Bureau's approach to Compliance Aids.

This executive summary was originally posted on December 10, 2020 and was revised on February 10, 2021 to clarify the General QM pricing thresholds applicable to covered transactions secured by a manufactured home.

standards contained in Appendix Q of Regulation Z.[1] A second, temporary category of QMs consists of residential mortgage loans that, among other things, are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac (collectively, the government sponsored enterprises or GSEs).[2] This temporary category of QMs is sometimes referred to as the "Temporary GSE QM" category or as the "GSE Patch."

On June 22, 2020, the Bureau issued two notices of proposed rulemaking. First, the Bureau issued the Patch Extension NPRM, which proposed to amend the sunset date for the Temporary GSE QM category and to make conforming changes to the commentary. Second, the Bureau issued the General QM NPRM, which proposed to amend the requirements for the General QM category. Additionally, on August 18, 2020, the Bureau issued a separate notice of proposed rulemaking, the Seasoned QM NPRM, which proposed to create a new category of QMs (Seasoned QMs). As proposed, a first-lien, fixed-rate residential mortgage loan would fit within this category of QMs if it meets certain performance requirements over a seasoning period, is held in portfolio until the end of the seasoning period (subject to certain enumerated exceptions), complies with general restrictions on product features and points and fees, and meets certain underwriting requirements.

In a final rule released on October 20, 2020 (the Patch Extension Final Rule), the Bureau replaced the January 10, 2021 sunset date of the Temporary GSE QM category with a provision stating that the Temporary GSE QM category 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 definition. As detailed below, the mandatory compliance date of the final amendments to the General QM definition is July 1, 2021. Thus, the Temporary GSE QM category will be available only for covered transactions for which the creditor receives the consumer's application before July 1, 2021. The Patch Extension Final Rule did not amend the provision stating that the Temporary GSE QM category expires with respect to a GSE when that GSE exits conservatorship. The Patch Extension Final Rule did not affect the QM definitions that apply to Federal Housing Administration, U.S. Department of Veterans Affairs, U.S. Department of Agriculture, or Rural Housing Service loans.

On December 10, 2020, the Bureau issued final rules to amend the General QM definition (General QM Final Rule) and to create the Seasoned QM category (Seasoned QM Final Rule). These final rules are discussed below.

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[1] To fit within the General QM category, the loan also must comply with the ATR/QM Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements.

[2] To fit with the Temporary GSE QM category, the loan also must comply with the ATR/QM Rule's prohibitions on certain loan features and its points-and-fees limits but need not meet a 43 percent DTI limit.

General QM Final Rule

AMENDED GENERAL QM DEFINITION

The General QM Final Rule amends the General QM definition. Among other things, it replaces the existing 43 percent DTI limit with a price-based limit and removes Appendix Q as well as any requirements to use Appendix Q for General QM loans. However, the General QM Final Rule retains the ATR/QM Rule's consider and verify requirements and clarifies how they apply under the revised General QM definition. The General QM Final Rule also retains the existing product-feature and underwriting requirements and limits on points and fees.

PRICE-BASED LIMIT

A loan meets the revised General QM definition only if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than the applicable threshold set forth in the General QM Final Rule as of the date the interest rate is set. Generally, this threshold is 2.25 percentage points. However, the General QM Final Rule provides higher thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions. The thresholds set forth in the General QM Final Rule are:

- For a first-lien covered transaction with a loan amount greater than or equal to $110,260[3], 2.25 percentage points;
- For a first-lien covered transaction with a loan amount greater than or equal to $66,156 but less than $110,260, 3.5 percentage points;
- For a first-lien covered transaction with a loan amount less than $66,156, 6.5 percentage points;
- For a first-lien covered transaction secured by a manufactured home[4] with a loan amount less than $110,260, 6.5 percentage points;

[3] The loan amounts used for the thresholds will be adjusted annually for inflation.

[4] This threshold applies to first-lien covered transactions of less than $110,260 (indexed for inflation) that are secured by a manufactured home and land, or by a manufactured home only. For a first-lien covered transaction secured by a manufactured home with a loan amount equal to or greater than $110,260, the applicable threshold is 2.25 percentage points. Manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for this purposes.

- For a subordinate-lien covered transaction with a loan amount greater than or equal to $66,156, 3.5 percentage points; and

- For a subordinate-lien covered transaction with a loan amount less than $66,156, 6.5 percentage points.

If a loan's interest rate may or will change in the first five years after the date on which the first regular periodic payment will be due, the creditor must treat the highest interest rate that may apply during that five years as the loan's interest rate for the entire loan term when determining the APR for purposes of these thresholds. Additional information on determining the APR, the APOR, and the applicable threshold is available in the General QM Final Rule.

CONSIDER AND VERIFY REQUIREMENTS

The revised General QM definition retains consider and verify requirements. First, it requires that creditors consider the consumer's current or reasonably expected income or assets (other than the value of the dwelling that secures the loan and any real property attached to that dwelling), debt obligations, alimony, child support, and DTI ratio or residual income. Second, it requires that creditors verify the consumer's current or reasonably expected income or assets (other than the value of the dwelling that secures the loan and any real property attached to that dwelling) as well as the consumer's debt obligations, alimony, and child support. A creditor must verify such amounts using reasonably reliable third-party records and reasonable methods and criteria. A creditor may only consider amounts that it has verified in accordance with the verification requirements.

However, the General QM Final Rule does not prescribe specifically how a creditor must consider the monthly DTI ratio or residual income, a particular monthly DTI ratio or residual income threshold, or specific methods of underwriting that a creditor must use (other than to require that verification methods and criteria must be reasonable). Furthermore, the General QM Final Rule provides flexibility for a creditor to take into account additional factors that are relevant in determining a consumer's ability to repay the loan.

To prevent uncertainty that may result from Appendix Q's removal, the General QM Final Rule clarifies the consider and verify requirements in the revised General QM definition. For example, the General QM Final Rule clarifies that to meet the requirement to consider, a creditor must:

- Take into account current or reasonably expected income or assets (other than the value of the dwelling that secures the loan and any real property attached to that dwelling), debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ability-to-repay determination;

- Maintain written policies and procedures for how it takes into account income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ability-to-repay determination; and

- Retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ability-to-repay determination, including how it applied its policies and procedures. Examples of such documentation may include an underwriter worksheet or a final automated underwriting system certification, in combination with the creditor's applicable underwriting standards and any applicable exceptions described in its policies and procedures, that shows how these required factors were taken into account in the creditor's ability-to-repay determination. If a creditor does not satisfy this documentation requirement for a loan, that loan is not a General QM under the revised definition.

Additionally, the General QM Final Rule includes a list of specific verification standards that creditors may use to meet the revised General QM definition's verify requirement. If a creditor satisfies the verification standards in one or more[5] specified manuals, the creditor has a safe harbor for compliance with the verification requirement in the revised General QM definition. These standards include relevant provisions in specified versions of the Fannie Mae Single Family Selling Guide, the Freddie Mac Single-Family Seller/Servicer Guide, the FHA's Single Family Housing Policy Handbook, the VA's Lenders Handbook, and the USDA's Field Office Handbook for the Direct Single Family Housing Program and Handbook for the Single Family Guaranteed Loan Program. The General QM Final Rule sets forth the specific provisions and versions of these manuals that creditors must use to obtain a safe harbor, and notes a creditor also obtains a safe harbor if it complies with revised versions of the manuals listed in the General QM Final Rule, provided that the two versions are substantially similar. It clarifies that a creditor need only comply with requirements in the manuals for creditors to verify income, assets, debt obligations, alimony and child support using specified reasonably reliable third-party documents or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

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[5] Accordingly, a creditor may, but need not, satisfy the verify requirements by complying with the verification standards from more than one manual (in other words, by "mixing and matching" verification standards).

OTHER AMENDMENTS IN THE GENERAL QM FINAL RULE

The General QM Final Rule also clarifies that a creditor does not meet the verification requirements in the ATR/QM Rule's general ability-to-repay standard if the creditor observes an inflow of funds into the consumer's account without confirming that the funds are the consumer's personal income. For example, a creditor would not meet the verification requirements in the ATR/QM Rule's general ability-to-repay standard where it observes an unidentified deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income and is not from another source, such as proceeds from a loan.

The General QM Final Rule preserves the ATR/QM Rule's current threshold separating safe harbor from rebuttable presumption QMs. Under that threshold, 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. However, the General QM Final Rule creates a special rule for General QM loans for which 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 must determine the APR, for purposes of this threshold, 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.

The General QM Final Rule also makes conforming changes to the regulatory text and commentary. These conforming changes are shown in the unofficial redline available at http://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/ability-repay-qualified-mortgage-rule.

The General QM Final Rule does not affect the QM definitions that apply to Federal Housing Administration, U.S. Department of Veterans Affairs, U.S. Department of Agriculture, or Rural Housing Service loans.

EFFECTIVE DATE OF THE GENERAL QM FINAL RULE

The General QM Final Rule will be effective 60 days after it is published in the Federal Register. However, the General QM Final Rule has a separate mandatory compliance date. The mandatory compliance date is July 1, 2021. A creditor will have the option of complying with the revised General QM definition for covered transactions for which the creditor receives an application on or after the effective date and before July 1, 2021. The General QM Final Rule's revisions apply to covered transactions for which a creditor receives an application on or after July 1, 2021.

Seasoned QM Final Rule

The Seasoned QM Final Rule creates a new category of QMs, the Seasoned QM. A residential mortgage loan is a Seasoned QM and receives a safe harbor from liability under the ATR/QM Rule if the loan satisfies certain product restrictions, does not exceed a points-and-fees limit, satisfies underwriting requirements, is held in portfolio until the end of the seasoning period (subject to certain enumerated exceptions), and meets certain performance standards at the end of the seasoning period. A loan made by any creditor, regardless of size, is eligible to become a Seasoned QM if at the end of the seasoning period it meets the requirements in the Seasoned QM Final Rule. Loans that satisfy another QM definition at consummation also can be Seasoned QM loans, as long as the requirements for Seasoned QMs are met.

PRODUCT RESTRICTIONS AND POINTS-AND-FEES LIMIT

A loan has to meet the following product restrictions to be eligible to become a Seasoned QM:

- The loan is secured by a first lien. If a loan is a subordinate-lien loan, the loan is not eligible to be a Seasoned QM.
- The loan has a fixed rate. Adjustable-rate or step-rate mortgage loans are not eligible to be Seasoned QMs.
- The loan has regular, substantially equal periodic payments that are fully amortizing, does not allow negative amortization, and does not have a balloon payment. A loan has fully amortizing payments if periodic payments of principal and interest will fully repay the loan over the loan term.
- The loan term does not exceed 30 years.
- The loan is not a high-cost mortgage as defined in Regulation Z, 12 CFR 1026.32(a).

Additionally, the total points and fees for the loan cannot exceed the limits specified in the ATR/QM Rule. Generally, this means that the total points and fees cannot exceed 3 percent of the loan amount.

These product restrictions do not prohibit a qualifying change that is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, even if the qualifying change involves, for example, a balloon payment or lengthened loan term. The Seasoned QM Final Rule sets forth conditions that must be met for a change to be a qualifying change.

UNDERWRITING REQUIREMENTS

For a loan to be eligible to become a Seasoned QM, the creditor must meet consider and verify requirements for the loan. The creditor must consider the consumer's DTI ratio or residual income, income and assets other than the value of the dwelling, and debts and must verify the consumer's income or assets other than the value of the dwelling and the consumer's debts, using the consider and verify requirements established for General QMs in the General QM Final Rule.

As noted in the above discussion of the General QM Final Rule, to comply with these consider requirements, a creditor is required to take into account the consumer's income, assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ability-to-repay determination. Although the requirements do not prescribe how a creditor must take these factors into account or impose a particular standard or threshold for considering DTI ratio or residual income, a creditor must maintain written policies and procedures for how it takes into account the factors and retain documentation showing how it took into account the factors for a given loan.

Creditors are also required to satisfy verification requirements. They must verify the consumer's income or assets other than the value of the dwelling and the consumer's debts using reasonably reliable third-party records in a manner consistent with the revised standards for General QMs. As discussed above, creditors will receive a safe harbor for compliance with the verification requirements if they comply with verification standards in the relevant provisions of the manuals specified in the General QM Final Rule or with certain revised versions of those manuals.

PORTFOLIO REQUIREMENTS

In order to be eligible to be a Seasoned QM, a loan must meet certain portfolio requirements. Generally, a loan is eligible to be a Seasoned QM only if, at consummation, the loan is not subject to a commitment to be acquired by another person, and the creditor holds the loan in portfolio until the end of the seasoning period. However, the Seasoned QM Final Rule provides exceptions to these portfolio requirements.

First, the Seasoned QM Final Rule provides some exceptions that are similar to those that apply to Small Creditor QMs under the ATR/QM Rule. For example, it allows transfers pursuant to certain supervisory sales and pursuant to certain mergers and acquisitions.

Second, the Seasoned QM Final Rule allows for a single transfer during the seasoning period if the loan is not securitized as part of the transfer or at any other time before the end of the seasoning period. This exception may only be used one time. This means that if a loan is to remain eligible to become a Seasoned QM, a purchaser that acquires the loan pursuant to this exception may not subsequently transfer it to any other entity, unless a different exception applies. Additionally, the loan may not be securitized before the end of the seasoning period.

PERFORMANCE REQUIREMENTS

In order to become a Seasoned QM, a loan must meet certain performance requirements at the end of the seasoning period. Specifically, the loan can have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period.

The Seasoned QM Final Rule defines delinquency as the failure to make a periodic payment (in one full payment or in two or more partial payments) sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle by the date the periodic payment is due under the terms of the legal obligation. The failure to pay other amounts, such as late fees, does not constitute a delinquency for purposes of the performance requirements. Additionally, if there is a qualifying change during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, the principal and interest used to determine whether a periodic payment is delinquent are the principal and interest amounts as modified by the qualifying change.

When determining whether a scheduled periodic payment is delinquent for this purpose, the due date is the date the payment is due under the terms of the legal obligation, without regard to whether the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. However, if the first payment due date in the legal obligation at consummation is modified due to reasons related to the timing of delivery, set up, or availability for occupancy of the dwelling securing the loan, the modified first payment due date shall be considered when determining if the periodic payment is delinquent.

A periodic payment is 30 days delinquent when it is not paid before the due date of the following scheduled periodic payment. A periodic payment is 60 days delinquent if the consumer is more than 30 days delinquent on the first of two sequential periodic payments and does not make both sequential payments before the due date of the next scheduled periodic payment after the two sequential periodic payments. Thus, a monthly, bi-weekly, or quarterly periodic payment would be 30 days delinquent when the periodic payment is not paid by the due date of the following monthly, bi-weekly, or quarterly payment due date. The Seasoned QM Final Rule also provides an example of how to determine if a periodic payment is 60 days delinquent.

Funds taken from escrow and funds paid on behalf of the consumer by the creditor, servicer, or assignee of the loan (or any other person acting on their behalf) are not considered in assessing whether a periodic payment has been made or is delinquent for purposes of the Seasoned QM Final Rule's performance requirements. Creditors can, however, generally accept deficient payments, within a payment tolerance of $50, on up to three occasions during the seasoning period without triggering a delinquency for purposes of these performance requirements. This exception to the definition of delinquency in the Seasoned QM Final Rule only applies, however, if the creditor does not treat the payment as delinquent for purposes of the mortgage servicing provisions in subpart C of Regulation X.

SEASONING PERIOD

In order for a loan to be a Seasoned QM, it must meet certain requirements during or at the end of a seasoning period. Generally, the seasoning period is the 36-month period that begins on the date on which the first periodic payment is due after consummation. The end of the seasoning period occurs later in two situations.

First, if there is a delinquency of 30 days or more at the end of the final month of the seasoning period, the seasoning period is extended until there is no delinquency.

Second, time spent in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency does not count towards the seasoning period. Additionally, the seasoning period can only resume after the temporary payment accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change.

SAFE HARBOR

The Seasoned QM Final Rule provides a safe harbor for Seasoned QMs, regardless of whether the loan is a higher-priced loan.

EFFECTIVE DATE

The Seasoned QM Final Rule will be effective 60 days after it is published in the Federal Register. Its revisions to the ATR/QM Rule apply to covered transactions for which a creditor receives an application on or after the effective date. The Bureau expects the General QM and Seasoned QM Final Rules to take effect on the same date.

Additional Resources

The Bureau has released an unofficial redline showing the changes that the General QM Final Rule and the Seasoned QM Final Rule make to the ATR-QM Rule. It is available at http://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/ability-repay-qualified-mortgage-rule. The Bureau also will post an updated guide and updated charts as soon as they are available.