



1700 G Street NW, Washington, DC 20552

October 20, 2020

Unofficial Redline of the GSE Patch Extension Final Rule

On October 20, 2020, the Consumer Financial Protection Bureau (Bureau) issued a final rule (GSE Patch Extension Final Rule) to extend the sunset date of the temporary qualified mortgage definition in Regulation Z for loans that are eligible for purchase or guarantee by either Fannie Mae or Freddie Mac. The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that the GSE Patch Extension Final Rule makes to Regulation Z's regulatory text and commentary.

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation Z and its commentary. The changes that the GSE Patch Extension Final Rule makes to Regulation Z and its commentary are marked in **red**.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the final rule. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the final rule, the documents published in the *Federal Register* are the controlling documents. The redline includes asterisks to indicate where it omits text from current Regulation Z or its commentary that the GSE Patch Extension Final Rule would not change.

PART 1026—TRUTH IN LENDING (REGULATION Z)

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules For Certain Home Mortgage Transactions

§ 1026.43 Minimum standards for transactions secured by a dwelling.

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(e) * * *

(4) * * *

(iii) *Sunset of special rules.* (A) Each respective special rule described in paragraph (e)(4)(ii)(B), (C), (D), or (E) of this section shall expire on the effective date of a rule issued by each respective agency pursuant to its authority under TILA section 129C(b)(3)(ii) to define a qualified mortgage.

(B) Unless otherwise expired under paragraph (e)(4)(iii)(A) of this section, the special rules in this paragraph (e)(4) are available only for covered transactions for which the creditor receives the consumer's application consummated on or before January 10, 2021, the mandatory compliance date of a final rule issued by the Bureau amending paragraph (e)(2) of this section. The Bureau will also amend this paragraph prior to that mandatory compliance date to reflect the new status.

Supplement I to Part 1026—Official Interpretations

Section 1026.43—Minimum standards for transactions secured by a dwelling.

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43(e)(4) Qualified mortgage defined—special rules.

1. *Alternative definition.* Subject to the sunset provided under § 1026.43(e)(4)(iii), § 1026.43(e)(4) provides an alternative definition of qualified mortgage to the definition provided in § 1026.43(e)(2). To be a qualified mortgage under § 1026.43(e)(4), the transaction must satisfy the requirements under § 1026.43(e)(2)(i) through (iii), in addition to being one of the types of loans specified in § 1026.43(e)(4)(ii)(A) through (E).

2. *Termination of conservatorship.* Section 1026.43(e)(4)(ii)(A) requires that a covered transaction be eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617). The special rule under § 1026.43(e)(4)(ii)(A) does not apply if Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) has ceased operating under the conservatorship or receivership of the Federal Housing Finance Agency. For example, if either Fannie Mae or Freddie Mac (or succeeding limited-life regulatory entity) ceases to operate

under the conservatorship or receivership of the Federal Housing Finance Agency, § 1026.43(e)(4)(ii)(A) would no longer apply to loans eligible for purchase or guarantee by that entity; however, the special rule would be available for a loan that is eligible for purchase or guarantee by the other entity still operating under conservatorship or receivership.

3. *Timing.* Under § 1026.43(e)(4)(iii), the definition of qualified mortgage under ~~§ 1026.43 paragraph~~ (e)(4) applies only to loans for which the creditor receives the consumer's application consummated on or before January 10, 2021 ~~the mandatory compliance date of a final rule issued by the Bureau amending § 1026.43(e)(2)~~, regardless of whether Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) continues to operate under the conservatorship or receivership of the Federal Housing Finance Agency. Accordingly, § 1026.43(e)(4) is available only for covered transactions ~~consummated on or before the earlier of either:~~

i. That are consummated on or before ~~The the~~ date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617); ~~or~~ and

ii. January 10, 2021, as provided by § 1026.43(e)(4)(iii). ~~That are transactions for which the creditor receives the consumer's application before the mandatory compliance date of a final rule issued by the Bureau amending § 1026.43(e)(2), as provided by § 1026.43(e)(4)(iii). The Bureau will also amend this commentary prior to that mandatory compliance date to reflect the new status.~~

4. Application. Under § 1026.43(e)(4)(iii)(B), the special rules in § 1026.43(e)(4) ~~— unless they are otherwise expired under § 1026.43(e)(4)(iii)(A) —~~ are available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of a final rule issued by the Bureau amending paragraph (e)(2) of this section. Under § 1026.2(a)(3)(i), application means the submission of a consumer's financial information for the purposes of obtaining an extension of credit. This definition applies to all transactions covered by Regulation Z. Regulation Z also provides a more specific definition for transactions subject to § 1026.19(e), (f), or (g). For such transactions, an application consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. Therefore, for transactions subject to § 1026.19(e), (f), or (g), creditors determine the date the creditor received the consumer's application, for purposes of § 1026.43(e)(4)(iii)(B), in accordance with § 1026.2(a)(3)(ii). For transactions that are not subject to § 1026.19(e), (f), or (g), creditors can determine the date the creditor received the consumer's application, for purposes of § 1026.43(e)(4)(iii)(B), in accordance with either § 1026.2(a)(3)(i) or (ii).

45. Eligible for purchase, guarantee, or insurance except with regard to matters wholly unrelated to ability to repay. To satisfy § 1026.43(e)(4)(ii), a loan need not be actually purchased or guaranteed by Fannie Mae or Freddie Mac or insured or guaranteed by one of the Agencies (the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS)). Rather, § 1026.43(e)(4)(ii) requires only that the creditor determine that the loan is eligible (*i.e.*, meets the criteria) for such purchase, guarantee, or insurance at consummation. For example, for purposes of § 1026.43(e)(4), a creditor is not required to sell a loan to Fannie

Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) for that loan to be a qualified mortgage; however, the loan must be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), including satisfying any requirements regarding consideration and verification of a consumer's income or assets, credit history, debt-to-income ratio or residual income, and other credit risk factors, but not any requirements regarding matters wholly unrelated to ability to repay. To determine eligibility for purchase, guarantee or insurance, a creditor may rely on a valid underwriting recommendation provided by a GSE automated underwriting system (AUS) or an AUS that relies on an Agency underwriting tool; compliance with the standards in the GSE or Agency written guide in effect at the time; a written agreement between the creditor or a direct sponsor or aggregator of the creditor and a GSE or Agency that permits variation from the standards of the written guides and/or variation from the AUSs, in effect at the time of consummation; or an individual loan waiver granted by the GSE or Agency to the creditor. For creditors relying on the variances of a sponsor or aggregator, a loan that is transferred directly to or through the sponsor or aggregator at or after consummation complies with § 1026.43(e)(4). In using any of the four methods listed above, the creditor need not satisfy standards that are wholly unrelated to assessing a consumer's ability to repay that the creditor is required to perform. Matters wholly unrelated to ability to repay are those matters that are wholly unrelated to credit risk or the underwriting of the loan. Such matters include requirements related to the status of the creditor rather than the loan, requirements related to selling, securitizing, or delivering the loan, and any requirement that the creditor must perform after the consummated loan is sold, guaranteed, or endorsed for insurance such as document custody, quality control, or servicing.

Accordingly, a covered transaction is eligible for purchase or guarantee by Fannie Mae or Freddie Mac, for example, if:

i. The loan conforms to the relevant standards set forth in the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single-Family Seller/Servicer Guide in effect at the time, or to standards set forth in a written agreement between the creditor or a sponsor or aggregator of the creditor and Fannie Mae or Freddie Mac in effect at that time that permits variation from the standards of those guides;

ii. The loan has been granted an individual waiver by a GSE, which will allow purchase or guarantee in spite of variations from the applicable standards; or

iii. The creditor inputs accurate information into the Fannie Mae or Freddie Mac AUS or another AUS pursuant to a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the GSE AUS; the loan receives one of the recommendations specified below in paragraphs A or B from the corresponding GSE AUS or an equivalent recommendation pursuant to another AUS as authorized in the written agreement; and the creditor satisfies any requirements and conditions specified by the relevant AUS that are not wholly unrelated to ability to repay, the non-satisfaction of which would invalidate that recommendation:

A. An "Approve/Eligible" recommendation from Desktop Underwriter (DU); or

B. A risk class of "Accept" and purchase eligibility of "Freddie Mac Eligible" from Loan Prospector (LP).

56. Repurchase and indemnification demands. A repurchase or indemnification

demand by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS is not dispositive of qualified mortgage status. Qualified mortgage status under § 1026.43(e)(4) depends on whether a loan is eligible to be purchased, guaranteed, or insured at the time of consummation, provided that other requirements under § 1026.43(e)(4) are satisfied. Some repurchase or indemnification demands are not related to eligibility criteria at consummation. *See* comment 43(e)(4)-4. Further, even where a repurchase or indemnification demand relates to whether the loan satisfied relevant eligibility requirements as of the time of consummation, the mere fact that a demand has been made, or even resolved, between a creditor and GSE or agency is not dispositive for purposes of § 1026.43(e)(4). However, evidence of whether a particular loan satisfied the § 1026.43(e)(4) eligibility criteria at consummation may be brought to light in the course of dealing over a particular demand, depending on the facts and circumstances. Accordingly, each loan should be evaluated by the creditor based on the facts and circumstances relating to the eligibility of that loan at the time of consummation. For example:

i. Assume eligibility to purchase a loan was based in part on the consumer's employment income of \$50,000 per year. The creditor uses the income figure in obtaining an approve/eligible recommendation from DU. A quality control review, however, later determines that the documentation provided and verified by the creditor to comply with Fannie Mae requirements did not support the reported income of \$50,000 per year. As a result, Fannie Mae demands that the creditor repurchase the loan. Assume that the quality control review is accurate, and that DU would not have issued an approve/eligible recommendation if it had been provided the accurate income figure. The DU determination at the time of consummation was invalid because it was based on inaccurate information provided by the creditor; therefore, the loan was never a qualified mortgage under § 1026.43(e)(4).

ii. Assume that a creditor delivered a loan, which the creditor determined was a qualified mortgage at the time of consummation under § 1026.43(e)(4), to Fannie Mae for inclusion in a particular To-Be-Announced ~~Mortgage-Mortgage~~-Backed Security (MBS) pool of loans. The data submitted by the creditor at the time of loan delivery indicated that the various loan terms met the product type, weighted-average coupon, weighted-average maturity, and other MBS pooling criteria, and MBS issuance disclosures to investors reflected this loan data. However, after delivery and MBS issuance, a quality control review determines that the loan violates the pooling criteria. The loan still meets eligibility requirements for Fannie Mae products and loan terms. Fannie Mae, however, requires the creditor to repurchase the loan due to the violation of MBS pooling requirements. Assume that the quality control review determination is accurate. Because the loan still meets Fannie Mae's eligibility requirements, it remains a qualified mortgage based on these facts and circumstances.