

1700 G Street NW, Washington, DC 20552

June 22, 2020

Unofficial Redline of the General QM Amendments Proposed Rule

On June 22, 2020, the Consumer Financial Protection Bureau (Bureau) issued a proposal (General QM Amendments Proposed Rule) to make certain amendments to the general definition of qualified mortgage in Regulation Z. The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that the General QM Amendments Proposed Rule would make 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 General QM Amendments Proposed Rule would make to Regulation Z and its commentary, if the Bureau were to adopt the changes as proposed, are marked in **red**.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the proposal. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the proposal, 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 General QM Amendments Proposed Rule would not change.

In a separate proposal (QM Patch Extension Proposed Rule) released simultaneously with the General QM Amendments Proposed Rule, the Bureau proposes amendments to extend the sunset date of the temporary qualified mortgage definition in Regulation Z. The Bureau is releasing a separate unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that the QM Patch Extension Proposed Rule would make to Regulation Z's regulatory text and commentary.

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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(b) *Definitions.* For purposes of this section:

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(4) *Higher-priced covered transaction* means a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; by 3.5 or more percentage points for a first-lien covered transaction that is a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; or by 3.5 or more percentage points for a subordinate-lien covered transaction. For purposes of a qualified mortgage under paragraph (e)(2) of this section, for a loan 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, the creditor must determine the annual percentage rate for purposes of this paragraph (b)(4) 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.

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(e) *Qualified mortgages*—* * *

(2) *Qualified mortgage defined—general.* Except as provided in paragraph (e)(4), (e)(5), (e)(6), or (f) of this section, a qualified mortgage is a covered transaction:

(i) That provides for regular periodic payments that are substantially equal, except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage, that do not:

(A) Result in an increase of the principal balance;

(B) Allow the consumer to defer repayment of principal, except as provided in paragraph (f) of this section; or

(C) Result in a balloon payment, as defined in § 1026.18(s)(5)(i), except as provided in paragraph (f) of this section;

(ii) For which the loan term does not exceed 30 years;

(iii) For which the total points and fees payable in connection with the loan do not exceed the amounts specified in paragraph (e)(3) of this section;

(iv) For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using:

(A) The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due; and

(B) Periodic payments of principal and interest that will repay either:

(1) The outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate set forth in paragraph (e)(2)(iv)(A) of this section, assuming the consumer will have made all required payments as due prior to that date; or

(2) The loan amount over the loan term;

(v) For which the creditor, at or before consummation:

(A) Considers the consumer's income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income, using the amounts determined from paragraph (e)(2)(v)(B) of this section. For purposes of this paragraph (e)(2)(v)(A), the consumer's monthly debt-to-income ratio or residual income is determined in accordance with paragraph (c)(7), except that the consumer's monthly payment on the covered transaction, including the monthly payment for mortgage-related obligations, is calculated in accordance with paragraph (e)(2)(iv) of this section.

(B)(1) Verifies the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan using third-party records that provide reasonably reliable evidence of the consumer's income or assets, in accordance with paragraph (c)(4) of this section; and

(2) Verifies the consumer's current debt obligations, alimony, and child support using reasonably reliable third-party records in accordance with paragraph (c)(3) of this section.

For which the creditor considers and verifies at or before consummation the following:

(A) The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with appendix Q and paragraphs (e)(2)(i) and (e)(4) of this section; and

(B) The consumer's current debt obligations, alimony, and child support in accordance with appendix Q and paragraphs (e)(2)(vi) and (e)(3) of this section; and

(vi) For which the annual percentage rate does not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the amounts specified in paragraphs (e)(2)(vi)(A) through (E) of this section. The amounts specified here shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) that was reported on the preceding June 1. For purposes of this paragraph (e)(2)(vi), the creditor must determine the annual percentage rate for a loan 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 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.

(A) For a first-lien covered transaction with a loan amount greater than or equal to \$109,898 (indexed for inflation), 2 or more percentage points;

(B) For a first-lien covered transaction with a loan amount greater than or equal to \$65,939 (indexed for inflation) but less than \$109,898 (indexed for inflation), 3.5 or more percentage points;

(C) For a first-lien covered transaction with a loan amount less than \$65,939 (indexed for inflation), 6.5 or more percentage points;

(D) For a subordinate-lien covered transaction with a loan amount greater than or equal to \$65,939 (indexed for inflation), 3.5 or more percentage points;

(E) For a subordinate-lien covered transaction with a loan amount less than \$65,939 (indexed for inflation), 6.5 or more percentage points.

~~For which the ratio of the consumer's total monthly debt to total monthly income at the time of consummation does not exceed 43 percent. For purposes of this paragraph (e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined:~~

~~(A) Except as provided in paragraph (e)(2)(vi)(B) of this section, in accordance with the standards in appendix Q;~~

~~(B) Using the consumer's monthly payment on:~~

~~(1) The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with paragraph (e)(2)(iv) of this section; and~~

~~(2) Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with paragraphs (e)(2)(iv) and (e)(6) of this section.~~

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~~(4) *Qualified mortgage defined—special rules—(i) General/other agencies.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction that is defined as a qualified mortgage by the U.S. Department of Housing and Urban Development under 24 CFR 201.7 and 24 CFR 203.19, the U.S. Department of Veterans Affairs under 38 CFR 36.4300 and 38 CFR 36.4500, or the U.S. Department of Agriculture under 7 CFR 3555.109.satisfies:~~

~~(A) The requirements of paragraphs (e)(2)(i) through (iii) of this section; and~~

~~(B) One or more of the criteria in paragraph (e)(4)(ii) of this section.~~

~~(ii) *Eligible loans.* A qualified mortgage under this paragraph (e)(4) must be one of the following at consummation:~~

~~(A) A loan that is eligible, except with regard to matters wholly unrelated to ability to repay:~~

~~(1) To be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or~~

~~(2) To be purchased or guaranteed by any limited life regulatory entity succeeding the charter of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i));~~

~~(B) A loan that is eligible to be insured, except with regard to matters wholly unrelated to ability to repay, by the U.S. Department of Housing and Urban Development under the National Housing Act (12 U.S.C. 1707 et seq.);~~

~~(C) A loan that is eligible to be guaranteed, except with regard to matters wholly unrelated to ability to repay, by the U.S. Department of Veterans Affairs;~~

~~(D) A loan that is eligible to be guaranteed, except with regard to matters wholly unrelated to ability to repay, by the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or~~

~~(E) A loan that is eligible to be insured, except with regard to matters wholly unrelated to ability to repay, by the Rural Housing Service.~~

~~(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 consummated on or before January 10, 2021.~~

~~(5) *Qualified mortgage defined—small creditor portfolio loans.*~~

~~(i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction:~~

~~(A) That satisfies the requirements of paragraph (e)(2) of this section other than the requirements of paragraphs (e)(2)(v) and (e)(2)(vi) ~~and without regard to the standards in appendix Q to this part;~~~~

~~(B) For which the creditor:~~

~~(1) Considers and verifies at or before consummation the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section;~~

(2) Considers and verifies at or before consummation the consumer's current debt obligations, alimony, and child support in accordance with paragraphs (c)(2)(vi) and (c)(3) of this section;

~~(3) considers~~ Considers at or before consummation the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in paragraph (c)(7)(i)(A) shall be determined in accordance with paragraph (e)(2)(iv) of this section instead of paragraph (c)(5) of this section;

(C) That is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (e)(5)(i)(D) of this section; and

(D) For which the creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(B) and (C).

(ii) A qualified mortgage extended pursuant to paragraph (e)(5)(i) of this section immediately loses its status as a qualified mortgage under paragraph (e)(5)(i) if legal title to the qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

(A) The qualified mortgage is sold, assigned, or otherwise transferred to another person three years or more after consummation of the qualified mortgage;

(B) The qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (e)(5)(i)(D) of this section;

(C) The qualified mortgage is sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 18310, actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee, an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(D) The qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

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(f) *Balloon-payment qualified mortgages made by certain creditors—*

(1) *Exemption.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage may provide for a balloon payment, provided:

(i) The loan satisfies the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A), (e)(2)(ii), and (e)(2)(iii), ~~and (e)(2)(v)~~ of this section, ~~but without regard to the standards in appendix Q;~~

(ii) The creditor determines at or before consummation that the consumer can make all of the scheduled payments under the terms of the legal obligation, as described in paragraph

(f)(1)(iv) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan;

(iii) The creditor:

(A) Considers and verifies at or before consummation the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section;

(B) Considers and verifies at or before consummation the consumer's current debt obligations, alimony, and child support in accordance with paragraphs (c)(2)(vi) and (c)(3) of this section;

~~(C) considers~~ Considers at or before consummation the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in (c)(7)(i)(A) shall be determined in accordance with paragraph (f)(1)(iv)(A) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment;

(iv) The legal obligation provides for:

(A) Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years;

(B) An interest rate that does not increase over the term of the loan; and

(C) A loan term of five years or longer.

(v) The loan is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (f)(1)(vi) of this section; and

(vi) The creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(A), (B), and (C).

(2) *Post-consummation transfer of balloon-payment qualified mortgage.* A balloon-payment qualified mortgage, extended pursuant to paragraph (f)(1), immediately loses its status as a qualified mortgage under paragraph (f)(1) if legal title to the balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

(i) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person three years or more after consummation of the balloon-payment qualified mortgage;

(ii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (f)(1)(vi) of this section;

(iii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 18310, actions or instructions of any person acting as conservator, receiver or bankruptcy trustee, an order of a State or Federal governmental agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(iv) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

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APPENDICES TO PART 1026

The General QM Amendments Proposed Rule would remove all of “Appendix Q to Part 1026—Standards for Determining Monthly Debt and Income” from Part 1026.

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Supplement I to Part 1026—Official Interpretations

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

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43(b)(4) Higher-priced covered transaction.

1. *Average prime offer rate.* The average prime offer rate is defined in § 1026.35(a)(2). For further explanation of the meaning of “average prime offer rate,” and additional guidance on determining the average prime offer rate, *see* comments 35(a)(2)-1 through -4.

2. *Comparable transaction.* A higher-priced covered transaction is a consumer credit transaction that is secured by the consumer's dwelling with an annual percentage rate that exceeds by the specified amount the average prime offer rate for a comparable transaction as of the date the interest rate is set. The published tables of average prime offer rates indicate how to identify a comparable transaction. *See* comment 35(a)(2)-2.

3. *Rate set.* A transaction's annual percentage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or “locked”) before consummation. Sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.

4. Determining the annual percentage rate for certain loans for which the interest rate may or will change. Provisions in subpart C, including the commentary to § 1026.17(c)(1), address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in § 1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under § 1026.32(a)(1)(i). Section 1026.43(b)(4) requires, only for the purposes of a qualified mortgage under § 1026.43(e)(2), a different determination of the annual percentage rate for purposes of § 1026.43(b)(4) for a loan 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. See comment 43(e)(2)(vi)-4 for how to determine the annual percentage rate of such a loan.

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43(c)(4) Verification of income or assets.

1. *Income or assets relied on.* A creditor need consider, and therefore need verify, only the income or assets the creditor relies on to evaluate the consumer's repayment ability. See comment 43(c)(2)(i)-2. For example, if a consumer's application states that the consumer earns a salary and is paid an annual bonus and the creditor relies on only the consumer's salary to evaluate the consumer's repayment ability, the creditor need verify only the salary. See also comments 43(c)(3)-1 and -2.

2. *Multiple applicants.* If multiple consumers jointly apply for a loan and each lists income or assets on the application, the creditor need verify only the income or assets the creditor relies on in determining repayment ability. See comment 43(c)(2)(i)-5.

3. *Tax-return transcript.* Under § 1026.43(c)(4), a creditor may verify a consumer's income using an Internal Revenue Service (IRS) tax-return transcript, which summarizes the information in a consumer's filed tax return, another record that provides reasonably reliable evidence of the consumer's income, or both. A creditor may obtain a copy of a tax-return transcript or a filed tax return directly from the consumer or from a service provider. A creditor need not obtain the copy directly from the IRS or other taxing authority. See comment 43(c)(3)-2.

4. *Unidentified funds.* A creditor does not meet the requirements of § 1026.43(c)(4) if it observes an inflow of funds into the consumer's account without confirming that the funds are income. For example, a creditor would not meet the requirements of § 1026.43(c)(4) where it observes an unidentified \$5,000 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 not, for example, proceeds from the disbursement of a loan.

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43(c)(7) Monthly debt-to-income ratio or residual income.

1. *Monthly debt-to-income ratio or monthly residual income.* Under § 1026.43(c)(2)(vii), the creditor must consider the consumer's monthly debt-to-income ratio, or the consumer's monthly residual income, in accordance with the requirements in § 1026.43(c)(7). ~~In contrast to the qualified mortgage provisions in § 1026.43(e), § Section~~ 1026.43(c) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, an appropriate threshold for a consumer's monthly debt-to-income ratio or monthly residual income is for the creditor to determine in making a reasonable and good faith determination of a consumer's ability to repay.

2. *Use of both monthly debt-to-income ratio and monthly residual income.* If a creditor considers the consumer's monthly debt-to-income ratio, the creditor may also consider the consumer's residual income as further validation of the assessment made using the consumer's monthly debt-to-income ratio.

3. *Compensating factors.* The creditor may consider factors in addition to the monthly debt-to-income ratio or residual income in assessing a consumer's repayment ability. For example, the creditor may reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio or lower residual income in light of the consumer's assets other than the dwelling, including any real property attached to the dwelling, securing the covered transaction, such as a savings account. The creditor may also reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio in light of the consumer's residual income.

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Paragraph 43(e)(2)(v).

1. *General.* For guidance on satisfying § 1026.43(e)(2)(v), a creditor may rely on commentary to § 1026.43(c)(2)(i) and (vi), (c)(3), and (c)(4).

~~2. *Income or assets.* Section 1026.43(e)(2)(v)(A) requires creditors to consider and verify the consumer's current or reasonably expected income or assets. For purposes of this requirement, the creditor must consider and verify, at a minimum, any income specified in appendix Q. A creditor may also consider and verify any other income in accordance with §1026.43(e)(2)(i) and (e)(4); however, such income would not be included in the total monthly debt to income ratio determination required by §1026.43(e)(2)(vi).~~

~~3. *Debts.* Section 1026.43(e)(2)(v)(B) requires creditors to consider and verify the consumer's current debt obligations, alimony, and child support. For purposes of this requirement, the creditor must consider and verify, at a minimum, any debt or liability specified in appendix Q. A creditor may also consider and verify other debt in accordance with §1026.43(e)(2)(vi) and (e)(3); however, such debt would not be included in the total monthly debt to income ratio determination required by §1026.43(e)(2)(vi).~~

Paragraph 43(e)(2)(v)(A).

1. *Consider.* In order to comply with the requirement to consider income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income under § 1026.43(e)(2)(v)(A), a creditor must take into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. Under § 1026.25(a), a creditor must retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. Examples of such documentation may include, for example, an underwriter worksheet or a final automated underwriting system certification, alone or in combination with the creditor's applicable underwriting standards, that show how these required factors were taken into account in the creditor's ability-to-repay determination.

2. *Requirement to consider monthly debt-to-income ratio or residual income.* Section 1026.43(e)(2)(v)(A) does not prescribe specifically how a creditor must consider monthly debt-to-income ratio or residual income. Section 1026.43(e)(2)(v)(A) also does not prescribe a particular monthly debt-to-income ratio or residual income threshold with which a creditor must comply. A creditor may, for example, consider monthly debt-to-income ratio or residual income by establishing monthly debt-to-income or residual income thresholds for its own underwriting standards and documenting how it applied those thresholds to determine the

consumer's ability to repay. A creditor may also consider these factors by establishing monthly debt-to-income or residual income thresholds and exceptions to those thresholds based on other compensating factors, and documenting application of the thresholds along with any applicable exceptions.

3. Flexibility to consider additional factors related to a consumer's ability to repay. The requirement to consider income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income does not preclude the creditor from taking into account additional factors that are relevant in determining a consumer's ability to repay the loan. For guidance on considering additional factors in determining the consumer's ability to repay, see comment 43(c)(7)-3.

Paragraph 43(e)(2)(v)(B).

1. Verification of income, assets, debt obligations, alimony, and child support. Section 1026.43(e)(2)(v)(B) does not prescribe specific methods of underwriting that creditors must use. Section 1026.43(e)(2)(v)(B)(1) requires a creditor to verify the consumer's current or reasonably expected income or assets (including any real property attached to the value of the dwelling) that secures the loan in accordance with § 1026.43(c)(4), which states that a creditor must verify such amounts using third-party records that provide reasonably reliable evidence of the consumer's income or assets. Section 1026.43(e)(2)(v)(B)(2) requires a creditor to verify the consumer's current debt obligations, alimony, and child support in accordance with § 1026.43(c)(3), which states that a creditor must verify such amounts using reasonably reliable third-party records. So long as a creditor complies with the provisions of § 1026.43(c)(3) with respect to debt obligations, alimony, and child support and § 1026.43(c)(4) with respect to income and assets, the creditor is permitted to use any reasonable verification methods and criteria.

2. Classifying and counting income, assets, debt obligations, alimony, and child support. "Current and reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan" is determined in accordance with § 1026.43(c)(2)(i) and its commentary. "Current debt obligations, alimony, and child support" has the same meaning as under § 1026.43(c)(2)(vi) and its commentary. Sections 1026.43(c)(2)(i) and (vi) and the associated commentary apply to a creditor's determination with respect to what inflows and property it may classify and count as income or assets and what obligations it must classify and count as debt obligations, alimony, and child support, pursuant to its compliance with § 1026.43(e)(2)(v)(B).

3. Safe harbor for compliance with specified external standards.

i. Meeting the standards in the following documents for verifying current or reasonably expected income or assets using third-party records provides a creditor with reasonably reliable evidence of the consumer's income or assets. Meeting the standards in the following documents for verifying current debt obligations, alimony, and child support obligation using third-party records provides a creditor with reasonably reliable evidence of the consumer's debt obligations, alimony, and child support obligations. Accordingly, a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with verification standards in one or more of the following documents: [List to be Determined, as Discussed in Preamble].

ii. Applicable provisions in standards. A creditor complies with § 1026.43(e)(2)(v)(B) if it complies with requirements in the standards listed in comment 43(e)(2)(v)(B)-3 for creditors

to verify income, assets, debt obligations, alimony and child support using specified documents or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

iii. *Inapplicable provisions in standards.* For purposes of compliance with § 1026.43(e)(2)(v)(B), a creditor need not comply with requirements in the standards listed in comment 43(e)(2)(v)(B)-3 other than those that require lenders to verify income, assets, debt obligations, alimony and child support using specified documents or to classify and count particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

iv. *Revised versions of standards.* A creditor also complies with § 1026.43(e)(2)(v)(B) where it complies with revised versions of the standards listed in comment 43(e)(2)(v)(B)-3.i, provided that the two versions are substantially similar.

v. *Use of standards from more than one document.* A creditor complies with § 1026.43(e)(2)(v)(B) if it complies with the verification standards in one or more of the documents specified in comment 43(e)(2)(v)(B)-3.i. Accordingly, a creditor may, but need not, comply with § 1026.43(e)(2)(v)(B) by complying with the verification standards from more than one document (in other words, by “mixing and matching” verification standards).

Paragraph 43(e)(2)(vi).

1. *Determining the average prime offer rate for a comparable transaction as of the date the interest rate is set.* For guidance on determining the average prime offer rate for a comparable transaction as of the date the interest rate is set, see comments 43(b)(4)-1 through -3.

2. *Determination of applicable threshold.* A creditor must determine the applicable threshold by determining which category the loan falls into based on the face amount of the note (the “loan amount” as defined in §1026.43(b)(5)). For example, for a first-lien covered transaction with a loan amount of \$75,000, the loan would fall into the tier for loans greater than or equal to \$65,939 (indexed for inflation) but less than \$109,898 (indexed for inflation), for which the applicable threshold is 3.5 or more percentage points.

3. *Annual adjustment for inflation.* The dollar amounts in §1026.43(e)(2)(vi) will be adjusted annually on January 1 by the annual percentage change in the CPI-U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

4. *Determining the annual percentage rate for certain loans for which the interest rate may or will change.*

i. *In general.* The commentary to § 1026.17(c)(1) and other provisions in subpart C address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in § 1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under § 1026.32(a)(1)(i). Section 1026.43(e)(2)(vi) requires, for the purposes of § 1026.43(e)(2)(vi), a different determination of the annual percentage rate for a qualified mortgage under § 1026.43(e)(2) 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. An

identical special rule for determining the annual percentage rate for such a loan also applies for purposes of § 1026.43(b)(4).

ii. *Loans for which the interest rate may or will change.* Section 1026.43(e)(2)(vi) includes a special rule for determining the annual percentage rate for a loan 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. This rule applies to adjustable-rate mortgages that have a fixed-rate period of five years or less and to step-rate mortgages for which the interest rate changes within that five-year period.

iii. *Maximum interest rate during the first five years.* For a loan 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, a creditor must treat the maximum interest rate that could apply at any time during that five-year period as the interest rate for the full term of the loan to determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi), regardless of whether the maximum interest rate is reached at the first or subsequent adjustment during the five-year period. For additional instruction on how to determine the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due. See comments 43(e)(2)(iv)-3 and -4.

iv. *Treatment of the maximum interest rate in determining the annual percentage rate.* For a loan 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, the creditor must determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi) by treating the maximum interest rate that may apply within the first five years as the interest rate for the full term of the loan. For example, assume an adjustable-rate mortgage with a loan term of 30 years and an initial discounted rate of 5.0 percent that is fixed for the first three years. Assume that the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 7.0 percent. Pursuant to § 1026.43(e)(2)(vi), the creditor must determine the annual percentage rate based on an interest rate of 7.0 percent applied for the full 30-year loan term.

1. *Calculation of monthly payment on the covered transaction and simultaneous loans.* As provided in appendix Q, for purposes of §1026.43(e)(2)(vi), creditors must include in the definition of “debt” a consumer's monthly housing expense. This includes, for example, the consumer's monthly payment on the covered transaction (including mortgage-related obligations) and on simultaneous loans. Accordingly, §1026.43(e)(2)(vi)(B) provides the method by which a creditor calculates the consumer's monthly payment on the covered transaction and on any simultaneous loan that the creditor knows or has reason to know will be made

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

1. *General.* The Department of Housing and Urban Development, Department of Veterans Affairs, and the Department of Agriculture have promulgated definitions for qualified mortgages under mortgage programs they insure, guarantee, or provide under applicable law. Cross-references to those definitions are listed in § 1026.43(e)(4) to acknowledge the covered transactions covered by those definitions are qualified mortgages for purposes of this section. *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. *Mortgages originated prior to [effective date].* Covered transactions that met the requirements of § 1026.43(e)(2)(i) thorough (iii), *Termination of conservatorship.* Section 1026.43(e)(4)(ii)(A) requires that a covered transaction be were 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), and were consummated prior to [effective date of any final rule] continue to be qualified mortgages for the purposes of this section. 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. *[RESERVED]. Timing.* Under § 1026.43(e)(4)(iii), the definition of qualified mortgage under paragraph (e)(4) applies only to loans consummated on or before January 10, 2021, 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. 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~~

~~ii. January 10, 2021, as provided by § 1026.43(e)(4)(iii).~~

~~4. *[RESERVED]. 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/Service 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).~~

5. ~~[RESERVED].~~ *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 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.

Paragraph 43(e)(5).

1. *Satisfaction of qualified mortgage requirements.* For a covered transaction to be a qualified mortgage under § 1026.43(e)(5), the mortgage must satisfy the requirements for a qualified mortgage under § 1026.43(e)(2), other than the requirements ~~regarding debt-to-income ratio in § 1026.43(e)(2)(v) and (vi)~~. For example, a qualified mortgage under § 1026.43(e)(5) may not have a loan term in excess of 30 years because longer terms are prohibited for qualified mortgages under § 1026.43(e)(2)(ii). Similarly, a qualified mortgage under § 1026.43(e)(5) may not result in a balloon payment because § 1026.43(e)(2)(i)(C) provides that qualified mortgages may not have balloon payments except as provided under § 1026.43(f). However, a covered transaction need not comply with § 1026.43(e)(2)(v) and (vi), ~~which prohibits consumer monthly debt-to-income ratios in excess of 43 percent. A covered transaction therefore can be a qualified mortgage under § 1026.43(e)(5) even though the consumer's monthly debt-to-income ratio is greater than 43 percent.~~

2. *Debt-to-income ratio or residual income.* Section 1026.43(e)(5) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, creditors must consider a consumer's debt-to-income ratio or residual income calculated generally in accordance with § 1026.43(c)(7) and verify the information used to calculate the debt-to-income ratio or residual income in accordance with § 1026.43(c)(3) and (4). However, § 1026.43(c)(7)

refers creditors to § 1026.43(c)(5) for instructions on calculating the payment on the covered transaction. Section 1026.43(c)(5) requires creditors to calculate the payment differently than § 1026.43(e)(2)(iv). For purposes of the qualified mortgage definition in § 1026.43(e)(5), creditors must base their calculation of the consumer's debt-to-income ratio or residual income on the payment on the covered transaction calculated according to § 1026.43(e)(2)(iv) instead of according to § 1026.43(c)(5). ~~Creditors are not required to calculate the consumer's monthly debt to income ratio in accordance with appendix Q to this part as is required under the general definition of qualified mortgages by § 1026.43(e)(2)(vi).~~

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Paragraph 43(f)(1)(i).

1. *Satisfaction of qualified mortgage requirements.* Under § 1026.43(f)(1)(i), for a mortgage that provides for a balloon payment to be a qualified mortgage, the mortgage must satisfy the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A), (e)(2)(ii), and (e)(2)(iii), and (v). Therefore, a covered transaction with balloon payment terms must provide for regular periodic payments that do not result in an increase of the principal balance, pursuant to § 1026.43(e)(2)(i)(A); must have a loan term that does not exceed 30 years, pursuant to § 1026.43(e)(2)(ii); and must have total points and fees that do not exceed specified thresholds pursuant to § 1026.43(e)(2)(iii); ~~and must satisfy the consideration and verification requirements in § 1026.43(e)(2)(v).~~

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Paragraph 43(f)(1)(iii).

1. *Debt-to-income or residual income.* A creditor must consider and verify the consumer's monthly debt-to-income ratio or residual income to meet the requirements of § 1026.43(f)(1)(iii)(C). To calculate the consumer's monthly debt-to-income or residual income for purposes of § 1026.43(f)(1)(iii)(C), the creditor may rely on the definitions and calculation rules in § 1026.43(c)(7) and its accompanying commentary, except for the calculation rules for a consumer's total monthly debt obligations (which is a component of debt-to-income and residual income under § 1026.43(c)(7)). For purposes of calculating the consumer's total monthly debt obligations under § 1026.43(f)(1)(iii), the creditor must calculate the monthly payment on the covered transaction using the payment calculation rules in § 1026.43(f)(1)(iv)(A), together with all mortgage-related obligations and excluding the balloon payment.