Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

June 22, 2020

Summary of Proposed Rule-Makings: June 2020 Proposals to Amend the ATR-QM Rule

On June 22, 2020, the Consumer Financial Protection Bureau (Bureau) issued two notices of proposed rulemaking (NPRMs) inviting the public to comment on potential amendments to the Bureau's Ability to Repay/Qualified Mortgage Rule (ATR-QM Rule). These two proposals are:

- Patch Extension NPRM: The Patch Extension NPRM proposes to amend the sunset date for a temporary category of qualified mortgages (QMs). This temporary category is sometimes called the "Temporary GSE QM" category or the "GSE Patch." The Patch Extension NPRM has a comment period of 30 days following publication in the *Federal Register*. The Patch Extension NPRM is available at http://content.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/qualified-mortgage-definition-under-truth-lending-act-regulation-z-extension-sunset-date/

- General QM NPRM: The General QM NPRM proposes to amend the definition of a permanent category of QMs sometimes referred to as the "General QM" category. The General QM NPRM has a comment period of 60 days following publication in the *Federal Register*. The General QM NPRM is available at http://content.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/qualified-mortgage-definition-under-truth-lending-act-general-qm-loan-definition/

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. To fit within the General QM category, residential mortgage loans must comply with the ATR-QM Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. Additionally, the ratio of the consumer's total monthly debt to total monthly income (DTI ratio) must not exceed 43 percent. Creditors must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the standards contained in Appendix Q of Regulation Z.

A second, temporary category of QMs consists of residential mortgage loans that comply with the same loan-feature prohibitions and points-and-fees limits as General QM loans and that are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac (collectively, the government sponsored enterprises or GSEs) while under the conservatorship of the Federal Housing Finance Agency. The NPRMs use the term "Temporary GSE QM" to refer to this QM category, but it is also known as the "GSE Patch." The ATR-QM Rule does not prescribe a DTI limit for Temporary GSE QM loans or require creditors to use Appendix Q to determine or verify the consumer's income, debt, or DTI ratio. Thus, a loan can qualify as a Temporary GSE QM even if the consumer's DTI ratio exceeds 43 percent, so long as the loan is eligible to be purchased or guaranteed by one or both of the GSEs. The Temporary GSE QM category is set to expire on January 10, 2021 (i.e., the sunset date) or when the GSEs exit conservatorship, whichever comes first.

As discussed below, the Patch Extension NPRM proposes to amend the sunset date for the Temporary GSE QM category and to make conforming changes to the commentary. It does not propose to amend the portion of Regulation Z that provides that the Temporary GSE QM category expires when the GSEs exit conservatorship.

The General QM NPRM proposes to amend the requirements for the General QM category. The Bureau expects that such amendments would allow some portion of loans that are currently made as Temporary GSE QM loans to receive General QM status and thereby help facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition.

Proposed extension of the sunset date for Temporary GSE QMs

The Patch Extension NPRM would extend the sunset date for the Temporary GSE QM category. It proposes that the sunset date correspond to the effective date of the final amendments to the General QM loan definition. It also states that the Bureau does not intend for this effective date to be prior to April 1, 2021. As discussed below, the Bureau is separately proposing amendments to the General QM loan definition in the General QM NPRM. Thus, under the Patch Extension NPRM, the Temporary GSE QM category would expire on the earlier of: (1) the effective date of the final amendments to the General QM category; or (2) the date that the GSEs exit conservatorship. In the unlikely event that the proposed amendments to the General QM category are not finalized, the Bureau would take appropriate action.

The Patch Extension NPRM also proposes conforming amendments to the commentary.

The Patch Extension NPRM would not affect QMs made pursuant to the rules of the Federal Housing Administration, United States Department of Veterans Affairs, or the United States Department of Agriculture.

Proposed changes to the General QM loan definition

The General QM NPRM would amend the General QM definition. Among other things, the General QM NPRM would remove the General QM loan definition's 43 percent DTI ratio limit and replace it with a limit based on the loan's pricing. It would also remove Appendix Q and any requirements to use Appendix Q to verify debt and income for General QM loans.

A loan generally would meet the General QM loan definition only if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than two percentage points as of the date the interest rate is set. The General QM NPRM would also provide higher thresholds for first-lien loans with loan amounts of less than $109,898 (indexed for inflation) and for subordinate-lien loans:

- 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), the threshold would be 3.5 percentage points;
- For a first-lien covered transaction with a loan amount less than $65,939 (indexed for inflation), the threshold would be 6.5 percentage points;
- For a subordinate-lien covered transaction with a loan amount greater than or equal to $65,939 (indexed for inflation), the threshold would be 3.5 or more percentage points; and

- For a subordinate-lien covered transaction with a loan amount less than $65,939 (indexed for inflation), the threshold would be 6.5 percentage points.

Additionally, it would retain the ATR-QM Rule's existing product-feature and underwriting requirements and limits on points and fees.

Although the General QM NPRM would remove the 43 percent DTI ratio requirement and Appendix Q, it would require creditors to: (1) consider the consumer's income, debt, and DTI ratio or residual income for General QM loans; and (2) verify the consumer's income, assets, debt obligations, alimony, and child support for General QM loans. The General QM NPRM would also clarify a creditor's obligation to consider and verify this information for purposes of the General QM loan definition.

Regarding the requirement to consider the consumer's income, debt, and DTI ratio, the General QM NPRM would require a creditor to retain documentation showing how it took into account income, debt, and DTI ratio or residual income when making its ability-to-repay determination. It would not prescribe how a creditor must consider DTI ratio or residual income. It also would explain that a creditor would be required to verify income, assets, debt obligations, alimony, and child support consistent with the verification requirements in the ATR-QM Rule's general ability-to-repay standard. Additionally, it would provide a creditor with a safe harbor for compliance with the verification requirement if the creditor complies with verification standards in one or more specified versions of certain documents. The Bureau is seeking comment on whether these documents should include the Fannie Mae Single Family Selling Guide and the Freddie Mac Single-Family Seller/Servicer Guide, as well as governmental standards from the Federal Housing Administration, United States Department of Veterans Affairs, and the United States Department of Agriculture.

The General QM NPRM also requests comment on two alternative approaches: (1) retaining the DTI ratio limit and increasing it to a specific threshold between 45 percent and 48 percent; or (2) using a hybrid approach involving both pricing and a DTI ratio limit, such as applying a DTI ratio limit to loans that are above specified rate spreads. Under these alternative approaches described in the General QM NPRM, creditors would not be required to consider or verify the DTI ratio using appendix Q. The Bureau also requests comment on, among other things, whether the proposed approaches to considering and verifying the DTI ratio would be workable with alternative approaches that retained a specific DTI ratio limit.

The General QM NPRM does not propose to change 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.

Similar to the Patch Extension NPRM, the General QM NPRM would not affect QMs made pursuant to the rules of the Federal Housing Administration, United States Department of Veterans Affairs, or the United States Department of Agriculture.

Additional resources

The Bureau has released unofficial redlines showing the changes that the NPRMs propose to make to the ATR-QM Rule. They are available at http://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/ability-repay-qualified-mortgage-rule.