Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

August 18, 2020

Summary of Proposed Rulemaking: August 2020 Proposal to Amend the ATR/QM Rule

On August 18, 2020, the Consumer Financial Protection Bureau (Bureau) issued a notice of proposed rulemaking (Seasoned QM NPRM) inviting the public to comment on potential amendments to the Bureau's Ability to Repay/Qualified Mortgage Rule (ATR/QM Rule). The NPRM proposes to amend the ATR/QM Rule to add a new category of qualified mortgages (QMs), the Seasoned QM. The NPRM has a comment period of 30 days following publication in the *Federal Register*. The NPRM, which includes information on submitting comments, is available at http://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/qualified-mortgage-definition-under-truth-lending-act-regulation-z-seasoned-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." A creditor that makes a QM loan is presumptively protected from liability under the ATR/QM Rule if the QM loan is "higher priced" (as that term is defined in the ATR/QM Rule), but is conclusively protected from such liability (i.e., has a safe harbor) if the QM loan is not "higher priced."

The ATR/QM Rule establishes different categories of QMs, including the Temporary GSE QM and the General QM. The Bureau previously proposed amendments related to these two categories of

QMs. Specifically, on June 22, 2020, the Bureau proposed amendments to the ATR/QM Rule that would extend the Temporary GSE QM category and amend the definition for the General QM category.[1]

Today, the Bureau is releasing a separate proposal, the Seasoned QM NPRM, that would amend the ATR/QM Rule to add a new category of QM, the Seasoned QM. The Bureau proposes that a final rule relating to the Seasoned QM NPRM would take effect on the same date as a final rule amending the General QM definition. The amendments adding a Seasoned QM to the ATR/QM Rule would apply to loans for which creditors receive an application on or after the final rule's effective date.

Proposed New Category of QM

Under the Seasoned QM NPRM, a loan would be a Seasoned QM and provide a safe harbor from liability under the ATR/QM Rule[2] if the loan meets certain product restrictions, satisfies certain underwriting requirements, is held in portfolio until the end of a 36-month seasoning period, and meets certain performance standards at the end of the 36-month seasoning period. A loan made by any creditor, regardless of size, would be eligible to become a Seasoned QM if at the end of the seasoning period it meets the requirements in the Seasoned QM NPRM.

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

- Be secured by a first lien;
- Have a fixed rate;
- Have regular, fully amortizing periodic payments that are substantially equal in amount (i.e., no negative amortization, interest-only payments, or balloon payments);

[1] The proposal to extend the Temporary GSE QM is available at http://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/qualified-mortgage-definition-under-truth-lending-act-regulation-z-extension-sunset-date/. The proposal to amend the General QM definition is available at http://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/qualified-mortgage-definition-under-truth-lending-act-general-qm-loan-definition/. A summary of the June 2020 proposals is available at http://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/ability-repay-qualified-mortgage-rule/.

[2] Under the Seasoned QM NPRM, a Seasoned QM would be conclusively presumed to comply with the ATR/QM Rule even if it is higher priced.

- Have a loan term that does not exceed 30 years; and
- Have total points and fees that do not exceed specified limits. The proposed limits on points and fees would be the same as those that apply to other QMs under the ATR/QM Rule.

For a loan to be eligible to become a Seasoned QM, the creditor would need to consider the consumer's debt-to-income (DTI) ratio or residual income and verify the consumer's debt obligations and income. However, the Seasoned QM NPRM would not specify a DTI limit or require the creditor to use appendix Q when underwriting the loan. The loan's underwriting process would need take into account the monthly payment for mortgage-related obligations, including applicable taxes, insurance, and assessments.

A loan would only be eligible to be a Seasoned QM if the creditor held the loan in portfolio until the end of the 36-month seasoning period. The Seasoned QM NPRM's proposed portfolio requirements are similar to those that apply to certain existing types of QMs under the ATR/QM Rule.

In order to be a Seasoned QM, a loan would have to meet certain performance requirements at the end of the 36-month seasoning period. Specifically, a loan could have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days during the seasoning period. "Delinquency" would mean a failure to make a periodic payment (in one full payment or in two or more partial payments) sufficient to cover principal, interest, and, if applicable, escrow by the date the periodic payment is due under the terms of the legal obligation. Under the proposed performance requirements, funds taken from escrow and funds paid on behalf of the consumer by the creditor, servicer, or an assignee (or any other person acting on their behalf) would not be considered in assessing whether a periodic payment has been made or is delinquent for purposes of the Seasoned QM NPRM. Creditors generally would be permitted, however, to 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 meeting the proposed performance requirements.

The Seasoned QM NPRM generally defines the seasoning period as a period of 36 months beginning on the date on which the first periodic payment is due after consummation.[3] Failure to make full contractual payments would not disqualify a loan from eligibility to become a Seasoned QM if the consumer is in a temporary payment accommodation extended in connection with a

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[3] However, if there is a delinquency of 30 days or more at the end of the final month of the seasoning period, the seasoning period would be extended until there is no delinquency.

disaster or pandemic-related national emergency, as long as certain conditions are met. However, time spent in such a temporary accommodation would not count towards the 36-month seasoning period, and the seasoning period could only resume after the temporary accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change as defined in the Seasoned QM NPRM. A qualifying change would be defined as an agreement entered into during or after a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency that ends any pre-existing delinquency and meets certain other conditions to ensure the loan remains affordable.