

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**[Docket No. CFPB-2021-0003]**

**RIN 3170-AA98**

**Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is proposing to delay the mandatory compliance date of the final rule titled Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition (General QM Final Rule) until October 1, 2022.

**DATES:** Comments must be received on or before April 5, 2021.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2021-0003 or RIN 3170-AA98, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [2021-NPRM-QMComplianceDateDelay@cfpb.gov](mailto:2021-NPRM-QMComplianceDateDelay@cfpb.gov). Include Docket No. CFPB-2021-0003 or RIN 3170-AA98 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—QM Compliance Date Delay, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

*Instructions:* The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC, area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID-19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>. In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ben Cady, Mark Morelli, Amanda Quester, or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary of the Proposed Rule**

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential

mortgage loan according to its terms. Loans that meet the ATR/QM Rule’s requirements for qualified mortgages (QMs) obtain certain protections from liability. The ATR/QM Rule defines several categories of QMs.

One QM category defined in the ATR/QM Rule is the General QM category. General QMs must comply with the ATR/QM Rule’s prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. Under the original ATR/QM Rule, the ratio of the consumer’s total monthly debt to total monthly income (DTI or DTI ratio) could not exceed 43 percent for a loan to meet the General QM loan definition. In December 2020, the Bureau issued the General QM Final Rule, which amended Regulation Z by replacing the General QM loan definition’s DTI limit with a limit based on loan pricing and making other changes to the General QM loan definition.<sup>1</sup> The General QM Final Rule took effect on March 1, 2021, and it provides a mandatory compliance date of July 1, 2021. For covered transactions for which creditors receive an application on or after the March 1, 2021 effective date and before the July 1, 2021 mandatory compliance date, creditors have the option of complying with either the revised General QM loan definition or the General QM loan definition in effect prior to March 1, 2021. Only the revised General QM loan definition is available for applications received on or after July 1, 2021.

The Bureau is proposing to delay the mandatory compliance date of the General QM Final Rule until October 1, 2022. Specifically, the proposal would amend comments 43-2 and 43(e)(4)-2 and -3 to reflect an extension of the mandatory compliance date of the General QM Final Rule by changing the date “July 1, 2021” where it appears in those comments to “October 1, 2022.” The proposal would also add new comment 43(e)(2)-1 to clarify the General QM loan

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<sup>1</sup> 85 FR 86308 (Dec. 29, 2020).

definitions available to creditors for applications received on or after March 1, 2021 but prior to October 1, 2022.

If this proposal is finalized, for covered transactions for which creditors receive an application on or after March 1, 2021 and before October 1, 2022, creditors would have the option of complying with either the revised General QM loan definition or the General QM loan definition in effect prior to March 1, 2021. Under the proposal, the revised regulations would apply to covered transactions for which creditors receive an application on or after October 1, 2022.

The ATR/QM Rule also defines a second, temporary category of QMs for mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QMs and (2) are eligible to be purchased or guaranteed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government-sponsored enterprises or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). This proposed rule refers to these loans as Temporary GSE QM loans, and the provision that created this loan category is commonly known as the GSE Patch. In October 2020, the Bureau issued a final rule stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of the General QM Final Rule.<sup>2</sup> Therefore, under the proposal, the Temporary GSE QM loan definition would expire upon the earlier of October 1, 2022 or the date the applicable GSE exits Federal conservatorship (rather than on the current mandatory compliance date of July 1, 2021 or the date the applicable GSE exits Federal conservatorship).

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<sup>2</sup> 85 FR 67938 (Oct. 26, 2020).

As discussed below, the Bureau is proposing to delay the mandatory compliance date of the General QM Final Rule to help ensure access to responsible, affordable mortgage credit and to preserve flexibility for consumers, particularly those affected by the COVID-19 pandemic. This proposal would not make other changes to the General QM loan definition. The Bureau plans to evaluate the General QM Final Rule’s amendments to the General QM loan definition and will consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM Final Rule.

The Bureau proposes that a final rule based on this proposal be effective 60 days after publication in the *Federal Register*. The Bureau anticipates that this would make the final rule effective before the current July 1, 2021 mandatory compliance date.

## **II. Background**

### *A. Dodd-Frank Act Amendments to the Truth in Lending Act and the January 2013 Final Rule*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>3</sup> amended the Truth in Lending Act (TILA)<sup>4</sup> to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.<sup>5</sup> As amended by the Dodd-Frank Act, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.<sup>6</sup> TILA

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<sup>3</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> 15 U.S.C. 1601 *et seq.*

<sup>5</sup> Dodd-Frank Act sections 1411-12, 1414, 124 Stat. 1376, 2142-49; 15 U.S.C. 1639c.

<sup>6</sup> 15 U.S.C. 1639c(a)(1). TILA section 103 defines “residential mortgage loan” to mean, with some exceptions including open-end credit plans, “any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.” 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.*, 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, DTI ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.<sup>7</sup>

A creditor may not be certain whether its ATR determination is reasonable in a particular case. TILA addresses this potential uncertainty by defining a category of loans—called QMs—for which a creditor “may presume that the loan has met” the ATR requirements.<sup>8</sup> The statute generally defines a QM to mean any residential mortgage loan for which:

- The loan does not have negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.<sup>9</sup>

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<sup>7</sup> 15 U.S.C. 1639c(a)(3).

<sup>8</sup> 15 U.S.C. 1639c(b)(1).

<sup>9</sup> 15 U.S.C. 1639c(b)(2)(A).

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA's ATR requirements (January 2013 Final Rule).<sup>10</sup> The January 2013 Final Rule became effective on January 10, 2014. This proposal refers to the January 2013 Final Rule and later amendments<sup>11</sup> to it collectively as the ATR/QM Rule or the Rule. The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QMs, two of which are discussed below.<sup>12</sup>

One category of QMs defined by the ATR/QM Rule consists of General QMs. The January 2013 Final Rule provided that a loan was a General QM if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits;<sup>13</sup>
- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years;<sup>14</sup>
- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q;<sup>15</sup> and

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<sup>10</sup> 78 FR 6408 (Jan. 30, 2013).

<sup>11</sup> As discussed in part II.C below, the Bureau made several amendments to the ATR/QM Rule in 2020. Prior to 2020, the Bureau made several other amendments to the ATR/QM Rule. *See* 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016); 85 FR 67938 (Oct. 26, 2020).

<sup>12</sup> 12 CFR 1026.43(c), (e). The ATR/QM Rule created several additional categories of QMs. The first additional category consisted of mortgages eligible to be insured or guaranteed (as applicable) by HUD (FHA loans), the U.S. Department of Veterans Affairs (VA loans), the U.S. Department of Agriculture (USDA loans), and the Rural Housing Service (RHS loans). 12 CFR 1026.43(e)(4)(ii)(B) through (E), as was in effect on February 26, 2021. This temporary category of QMs no longer exists because the relevant Federal agencies have since issued their own QM rules. *See, e.g.*, 24 CFR 203.19 (HUD rule). Other categories of QMs provide more flexible standards for certain loans originated by certain small creditors. 12 CFR 1026.43(e)(5), (f); *cf.* 12 CFR 1026.43(e)(6) (applicable only to covered transactions for which the application was received before Apr. 1, 2016).

<sup>13</sup> 12 CFR 1026.43(e)(2)(i) through (iii).

<sup>14</sup> 12 CFR 1026.43(e)(2)(iv).

<sup>15</sup> 12 CFR 1026.43(e)(2)(v), as was in effect on February 26, 2021.

- The consumer's DTI ratio is no more than 43 percent, determined in accordance with appendix Q.<sup>16</sup>

Appendix Q contained standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QMs. The standards in appendix Q were adapted from guidelines maintained by Federal Housing Administration (FHA) when the January 2013 Final Rule was issued.<sup>17</sup>

A second category of QMs defined by the January 2013 Final Rule, Temporary GSE QMs, consisted of mortgages that (1) comply with the ATR/QM Rule's prohibitions on certain loan features and its limitations on points and fees<sup>18</sup> and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of the FHFA.<sup>19</sup> Unlike for General QMs, the January 2013 Final Rule did not prescribe a DTI limit for Temporary GSE QMs nor did it require use of appendix Q to verify and calculate debt, income, and DTI ratios. The January 2013 Final Rule provided that the Temporary GSE QM loan definition would expire with respect to each GSE when that GSE ceases to operate under conservatorship or on January 10, 2021, whichever occurred first.<sup>20</sup> As discussed further below in part II.C.1, the Bureau issued a final rule in October 2020 extending the expiration of the Temporary GSE QM loan definition.<sup>21</sup>

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<sup>16</sup> 12 CFR 1026.43(e)(2)(vi), as was in effect on February 26, 2021.

<sup>17</sup> 78 FR 6408, 6527-28 (Jan. 30, 2013) (noting that appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

<sup>18</sup> 12 CFR 1026.43(e)(2)(i) through (iii).

<sup>19</sup> 12 CFR 1026.43(e)(4), as was in effect on February 26, 2021.

<sup>20</sup> 12 CFR 1026.43(e)(4)(ii)(A) and 1026.43(e)(4)(iii)(B), as was in effect on February 26, 2021.

<sup>21</sup> 85 FR 67938 (Oct. 26, 2020).



*B. The Bureau's Assessment of the ATR/QM Rule, Requests for Information, and the ANPR*

Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.<sup>22</sup> In January 2019, the Bureau published its ATR/QM Rule Assessment Report.<sup>23</sup> During the period leading up to and following the issuance of the Assessment Report, the Bureau solicited and received substantial public and stakeholder input on issues related to the ATR/QM Rule.<sup>24</sup>

On July 25, 2019, the Bureau issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The ANPR stated the Bureau's tentative plans to allow the Temporary GSE QM loan definition to expire in January 2021 or after a short extension. The Bureau also stated that it was considering whether to propose revisions to the General QM loan definition in light of the potential expiration of the Temporary GSE QM loan definition and requested comments on several topics related to the General QM loan definition.<sup>25</sup>

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<sup>22</sup> 12 U.S.C. 5512(d).

<sup>23</sup> See generally Bureau of Consumer Fin. Prot., *Ability to Repay and Qualified Mortgage Assessment Report* (Jan. 2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_ability-to-repay-qualified-mortgage\\_assessment-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf) (Assessment Report).

<sup>24</sup> See, e.g., 82 FR 25246 (June 1, 2017) (request for information in connection with the Bureau's assessment of the ATR/QM Rule); 83 FR 10437 (Mar. 9, 2018) (request for information on the Bureau's rulemaking process); 83 FR 12286 (Mar. 21, 2018) (request for information on the Bureau's adopted regulations and new rulemaking authorities); 83 FR 10437 (Mar. 9, 2018) (request for information on the Bureau's inherited regulations and inherited rulemaking authorities). In response to these requests for information, the Bureau received comments on the ATR/QM Rule from a wide variety of stakeholders.

<sup>25</sup> 84 FR 37155, 37160-62 (July 31, 2019).

### *C. The Bureau's 2020 QM Final Rules*

In 2020, the Bureau issued three final rules related to the ATR/QM Rule: The Patch Extension Final Rule, the General QM Final Rule, and the Seasoned QM Final Rule. These final rules are discussed below.

#### *1. The Patch Extension Final Rule*

The Bureau issued the Patch Extension Final Rule on October 20, 2020. It was published in the *Federal Register* on October 26, 2020.<sup>26</sup> The Patch Extension Final Rule amended Regulation Z to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition 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 loan definition in Regulation Z. The Patch Extension Final Rule did not amend the clause providing that the Temporary GSE QM loan definition expires on the date the applicable GSE exits Federal conservatorship. Therefore, under the Patch Extension Final Rule, the Temporary GSE QM loan definition will expire upon the earlier of the mandatory compliance date of the final amendments to the General QM loan definition or the date the applicable GSE exits Federal conservatorship.

#### *2. The General QM Final Rule*

The Bureau issued the General QM Final Rule on December 10, 2020. It was published in the *Federal Register* on December 29, 2020.<sup>27</sup> The General QM Final Rule amended Regulation Z to remove the General QM loan definition's DTI limit (and appendix Q) and replace it with a limit based on the loan's pricing. Under the General QM Final Rule, a loan

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<sup>26</sup> 85 FR 67938 (Oct. 26, 2020).

<sup>27</sup> 85 FR 86308 (Dec. 29, 2020).

meets 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 2.25 percentage points as of the date the interest rate is set. The final rule provided higher thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions. The final rule also requires that the creditor consider the consumer's DTI ratio or residual income, income or assets other than the value of the dwelling (including any real property attached to the dwelling) securing the loan, and debts and verify the consumer's income or assets other than the value of the property securing the transaction and debts. The final rule also provides a safe harbor for compliance with the verification requirement if a creditor complies with verification standards in certain manuals listed in the rule.<sup>28</sup>

The General QM Final Rule had an effective date of March 1, 2021 but provided a mandatory compliance date of July 1, 2021. Therefore, for covered transactions for which creditors receive an application on or after March 1, 2021 and before July 1, 2021, creditors have the option of complying with either the revised General QM loan definition or the General QM loan definition in effect prior to March 1, 2021. Under the Patch Extension Final Rule, described above, the Temporary GSE QM loan definition will expire on the mandatory compliance date of the General QM amendments. Therefore, for covered transactions for which creditors receive an application before July 1, 2021, creditors may also originate Temporary GSE QM loans.

### 3. *The Seasoned QM Final Rule*

The Bureau issued the Seasoned QM Final Rule on December 10, 2020. It was published in the *Federal Register* on December 29, 2020.<sup>29</sup> The Seasoned QM Final Rule

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<sup>28</sup> See comment 43(e)(2)(v)(B)-3.i.

<sup>29</sup> 85 FR 86402 (Dec. 29, 2020).

created a new category of QMs for first-lien, fixed-rate covered transactions that have met certain performance requirements over a seasoning period of at least 36 months, are held in portfolio by the originating creditor or first purchaser until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.<sup>30</sup> The Seasoned QM Final Rule took effect on March 1, 2021. Under the Seasoned QM Final Rule, the revised regulations apply to covered transactions for which creditors receive an application on or after this effective date. Thus, due to the seasoning period, no loan will be eligible to become a Seasoned QM until at least 36 months after March 1, 2021.

#### 4. *February 2021 Statement Regarding General QM and Seasoned QM Final Rules*

On February 23, 2021, the Bureau issued a Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule (Statement).<sup>31</sup> The Statement was published in the *Federal Register* on February 26, 2021.<sup>32</sup> The Statement indicated that the Bureau is considering whether to initiate a rulemaking to revisit the Seasoned QM Final Rule. It also noted that if the Bureau decides to do so, it expects that it will consider in that rulemaking whether any potential final rule revoking or amending the Seasoned QM Final Rule should affect covered transactions for which an application was received during the period from March 1, 2021, until the effective date of such a final rule. The Statement also indicated that the Bureau expected to issue shortly a proposed rule that would delay the July 1, 2021 mandatory

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<sup>30</sup> *Id.*

<sup>31</sup> Bureau of Consumer Fin. Prot., *Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule* (Feb. 23, 2021), [https://www.consumerfinance.gov/documents/9505/cfpb\\_qm-statement\\_2021-02.pdf](https://www.consumerfinance.gov/documents/9505/cfpb_qm-statement_2021-02.pdf).

<sup>32</sup> 86 FR 11623 (Feb. 26, 2021).

compliance date of the General QM Final Rule and that the Bureau will consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM Final Rule.

#### *D. The Effects of the COVID-19 Pandemic on the Mortgage Markets*

The General QM Final Rule acknowledged that the COVID-19 pandemic has had a significant effect on the U.S. economy. In the early months of the pandemic, economic activity contracted, millions of workers became unemployed, and mortgage markets were affected. Although the unemployment rate has declined from a high of 14.8 percent in April 2020 to 6.3 percent in January 2021,<sup>33</sup> unemployment remains elevated relative to the pre-pandemic rate of 3.5 percent in February 2020, and the labor force participation rate remains below pre-pandemic levels, at 61.4 percent in January 2021 versus 63.3 percent in February 2020. The housing market has seen a significant rebound in mortgage-origination activity, buoyed by historically low interest rates and by an increasingly large share of government and GSE-backed loans. However, the share of origination activity outside the government and GSE-backed origination channels has declined from pre-pandemic levels, and mortgage-credit availability for many consumers—including those who would be dependent on the non-QM market for financing—remains tight. The pandemic’s impact on both the secondary market for new originations and on the servicing of existing mortgages is described below.

##### *1. Secondary Market Impacts and Implications for Mortgage Origination Markets*

The early economic disruptions associated with the COVID-19 pandemic restricted the flow of credit in the U.S. economy, particularly as uncertainty rose in mid-March 2020, and

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<sup>33</sup> News Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, USDL-21-0158, *The Employment Situation* (Feb. 5, 2021), <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>, and <https://www.bls.gov/charts/employment-situation/civilian-labor-force-participation-rate.htm> (charts related to the Feb. 5, 2021 *The Employment Situation* news release).

investors moved rapidly towards cash and government securities.<sup>34</sup> The lack of investor demand to purchase mortgages, combined with a large supply of agency mortgage-backed securities (MBS) entering the market,<sup>35</sup> resulted in widening spreads between the rates on a 10-year Treasury note and mortgage interest rates.<sup>36</sup> This dynamic made it difficult for creditors to originate loans, as many creditors rely on the ability to profitably sell loans in the secondary market to generate the liquidity to originate new loans. This resulted in mortgages becoming more expensive for both homebuyers and homeowners looking to refinance. After the actions taken by the Board of Governors of the Federal Reserve System (Board) in March 2020 to purchase agency MBS “in the amounts needed to support smooth market functioning and effective transmission of monetary policy to broader financial conditions and the economy,”<sup>37</sup> market conditions improved substantially.<sup>38</sup> This helped to stabilize the MBS market and resulted in a decline in mortgage rates and a significant increase in refinance activity since the Board’s intervention.

Because non-agency MBS<sup>39</sup> are generally perceived by investors as riskier than agency MBS, the market for non-agency and non-QM mortgage credit significantly contracted in the

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<sup>34</sup> The Coronavirus Aid, Relief, and Economic Security Act, CARES Act: *Hearing on The Quarterly CARES Act Report to Congress Before the S. Comm. on Banking, Hous., & Urban Affairs*, 116th Cong. 2-3 (2020) (statement of Jerome H. Powell, Chairman, Bd. of Governors of the Fed. Reserve Sys.), <https://www.banking.senate.gov/imo/media/doc/Powell%20Testimony%205-19-20.pdf> (CARES Act Hearing).

<sup>35</sup> Agency MBS are backed by loans guaranteed by Fannie Mae, Freddie Mac, and the Government National Mortgage Association (Ginnie Mae).

<sup>36</sup> Laurie Goodman *et al.*, Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Mar. 26, 2020), <https://www.urban.org/sites/default/files/publication/101926/housing-finance-at-a-glance-a-monthly-chartbook-march-2020.pdf> (*Housing Finance at a Glance*) (on file).

<sup>37</sup> Press Release, Bd. of Governors of the Fed. Reserve Sys., *Federal Reserve announces extensive new measures to support the economy* (Mar. 23, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>.

<sup>38</sup> CARES Act Hearing, *supra* note 34, at 3.

<sup>39</sup> Non-agency MBS are not backed by loans guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae. This includes securities collateralized by non-QM loans.

early months of the pandemic. Issuance of non-agency MBS declined by 8.2 percent in the first quarter of 2020, with nearly all the transactions completed in January and February before the COVID-19 pandemic began to affect the economy significantly.<sup>40</sup> Nearly all major non-QM creditors ceased making loans in March and April 2020. The non-QM market has since been recovering, with strong investor demand for non-QM MBS due to better-than-expected performance during the pandemic.<sup>41</sup> Many non-QM creditors—which largely depend on the ability to sell loans in the secondary market in order to fund new loans—have resumed originations, although some continue to maintain tighter underwriting requirements compared to prior to the pandemic.<sup>42</sup> Other creditors that have typically specialized in non-QM financing have shifted their focus to GSE originations due to historically low interest rates and the relative speed and ease with which GSE loans can be originated. Nonetheless, many non-QM creditors and investors expect the non-QM market<sup>43</sup> to continue to strengthen in 2021 and recover to its pre-pandemic levels of production.<sup>44</sup>

As illustrated in Figure 1, the GSEs continue to play a dominant role in the market recovery, with the GSE share of first-lien mortgage originations at 61.9 percent in the third quarter of 2020, up from 45.3 percent in the third quarter of 2019. One analysis found that the

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<sup>40</sup> Brandon Ivey, *Non-Agency MBS Issuance Slowed in First Quarter*, Inside Mortg. Fin. (Apr. 3, 2020), <https://www.insidemortgagefinance.com/articles/217623-non-agency-mbs-issuance-slowed-in-first-quarter> (on file).

<sup>41</sup> Brandon Ivey, *Non-QM MBS Issuers Ready. But Where Are the Loans?*, Inside Mortg. Fin. (Jan. 29, 2021), <https://www.insidemortgagefinance.com/articles/220373-non-qm-originations-and-mbs-ready-to-rebound-after-the-refi-boom> (on file).

<sup>42</sup> Brandon Ivey, *Expanded-Credit Lending Inches Up in Third Quarter*, Inside Mortg. Fin. (Nov. 25, 2020), <https://www.insidemortgagefinance.com/articles/219861-expanded-credit-lending-ticks-up-in-3q-amid-slow-recovery> (on file).

<sup>43</sup> Refers to the non-QM market as defined by the January 2013 Final Rule. With the effective date of the price-based approach in the revised General QM loan definition, many of these loans historically considered non-QM may qualify for QM status after March 1, 2021.

<sup>44</sup> Brandon Ivey, *Outlook on Non-Agency MBS Issuance: Bright and Gloomy*, Inside Mortg. Fin. (Jan. 15, 2021), <https://www.insidemortgagefinance.com/articles/220261-mixed-views-on-the-outlook-for-non-agency-mbs-issuance-in-2021> (on file).

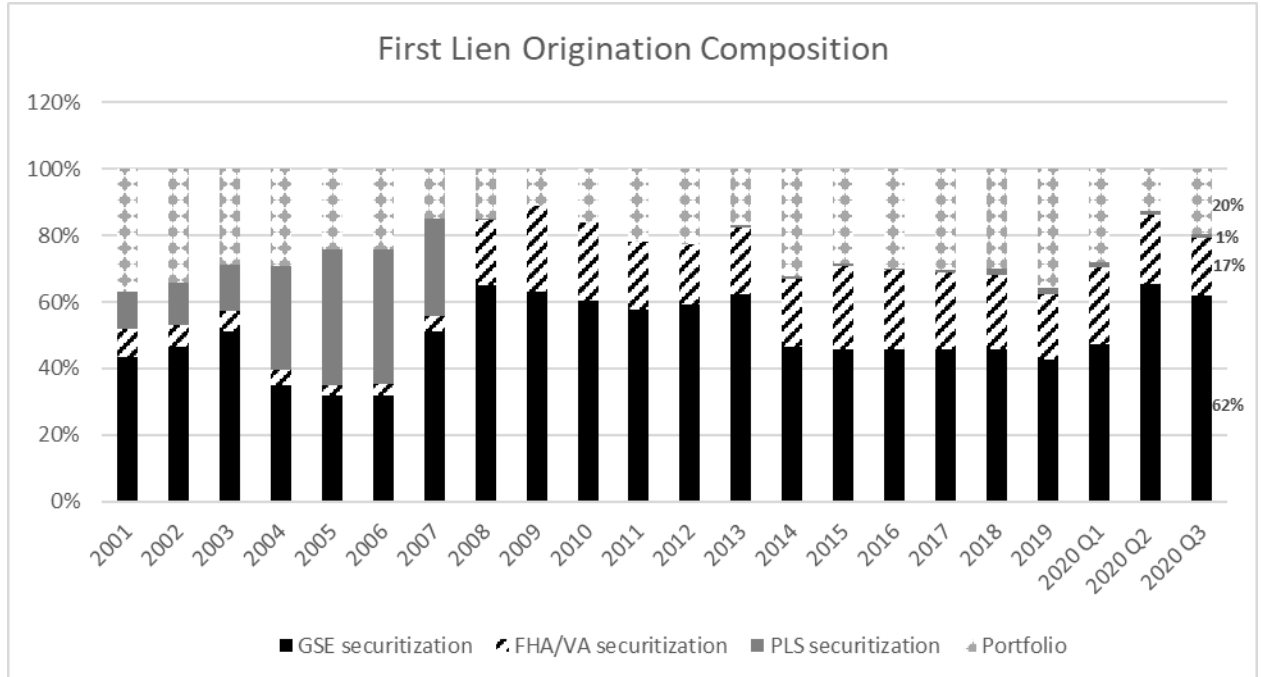
FHA and U.S. Department of Veterans Affairs (VA) share declined slightly to 17.4 percent from 19.5 percent a year prior.<sup>45</sup> Portfolio lending declined to 19.6 percent in the third quarter of 2020, down from 33.3 percent in the third quarter of 2019, and private label securitizations declined to 1 percent from 1.8 percent a year prior.

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<sup>45</sup> Laurie Goodman *et al.*, Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Jan. 2021), [https://www.urban.org/sites/default/files/publication/103539/housing-finance-at-a-glance-a-monthly-chartbook-january-2021\\_1.pdf](https://www.urban.org/sites/default/files/publication/103539/housing-finance-at-a-glance-a-monthly-chartbook-january-2021_1.pdf) (*Housing Finance at a Glance*) (on file).



Figure 1



Sources: Inside Mortgage Finance and the Urban Institute.

## 2. *Servicing Market Impacts and Implications for Origination Markets*

In addition to the direct impact on origination volume and composition, the pandemic's impact on the mortgage servicing market has downstream effects on mortgage originations as many of the same entities both originate and service mortgages. Anticipating that a number of homeowners would struggle to pay their mortgages due to the pandemic and related economic impacts, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)<sup>46</sup> in March 2020. The CARES Act provides certain protections for borrowers with federally backed mortgages, such as those whose mortgages are purchased or securitized by a GSE or insured or guaranteed by the FHA, VA, or U.S. Department of Agriculture (USDA). The CARES Act mandated a 60-day foreclosure moratorium for such mortgages and allowed borrowers to request up to 180 days of forbearance due to a COVID-19-related financial hardship, with an option to extend the forbearance period for an additional 180 days.

FHFA recently announced that borrowers with a mortgage backed by the GSEs may be eligible for two additional three-month forbearance extensions, for a total of up to 18 months of forbearance, for certain borrowers who began a COVID-19 forbearance on or before February 28, 2021. On February 16, 2021, FHA, VA, and USDA also provided up to six months of additional mortgage forbearance, in three-month increments, for borrowers who entered forbearance on or before June 30, 2020. FHA, VA, and USDA also extended the foreclosure moratorium on government-insured and guaranteed loans until June 30, 2021, from the previous expiration date of March 31, 2021, and the GSEs announced a similar extension on February 25,

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<sup>46</sup> Pub. L. 116-136, 134 Stat. 281 (2020).

2021.<sup>47</sup> The government agencies also announced an extension in the forbearance enrollment window until June 30, 2021, to provide additional time for borrowers to request a COVID-19 forbearance. FHFA has not yet announced a deadline for borrowers with mortgages backed by the GSEs to enroll in a COVID-19 forbearance plan.

Following the passage of the CARES Act, some mortgage servicers remain obligated to make some principal and interest payments to investors in GSE and Ginnie Mae securities, even if consumers are not making payments.<sup>48</sup> Servicers also remain obligated to make escrowed real estate tax and insurance payments to local taxing authorities and insurance companies. While servicers are required to hold liquid reserves to cover anticipated advances, early in the pandemic there were significant concerns that higher-than-expected forbearance rates over an extended period of time could lead to liquidity shortages, particularly among many non-bank servicers. While forbearance rates remain elevated at 5.22 percent for the week ending February 14, 2021, they have decreased since reaching their high of 8.55 percent on June 7, 2020.<sup>49</sup> However, the rate of decline has begun to slow, as illustrated in Figure 2 below.

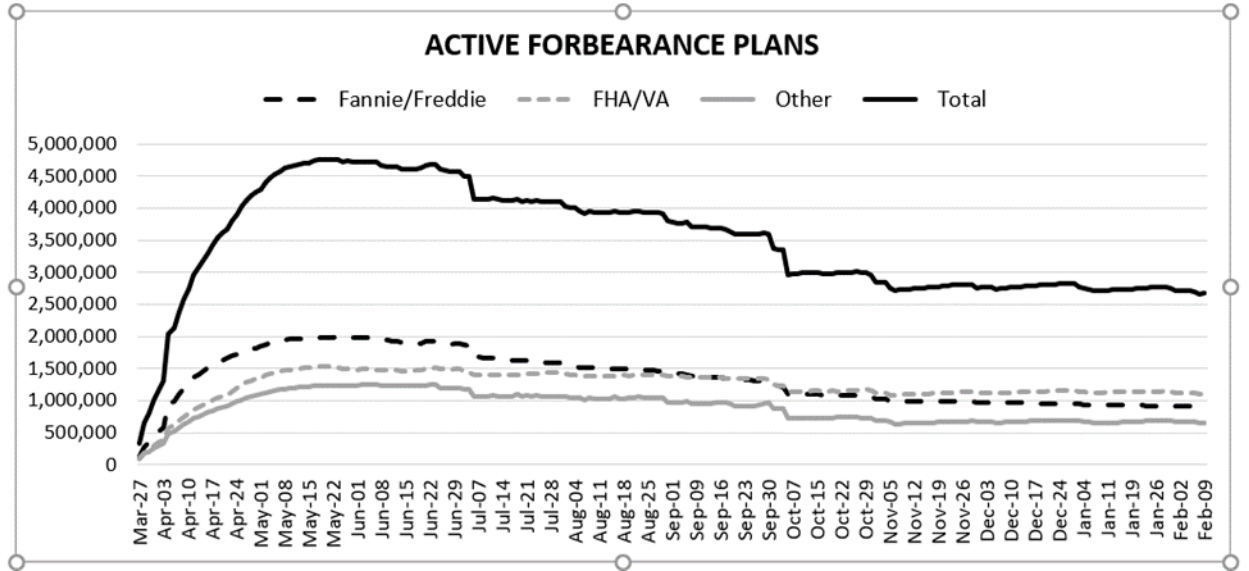
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<sup>47</sup> Press Release, The White House, *Fact Sheet: Biden Administration Announces Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners* (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forgbearance-and-foreclosure-protections-for-homeowners/>. See also Press Release, Fed. Hous. Fin. Agency, *FHFA Extends COVID-19 Forbearance Period and Foreclosure and REO Eviction Moratoriums* (Feb. 25, 2021), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx>.

<sup>48</sup> The GSEs typically repurchase loans out of the trust after they fall 120 days delinquent, after which the servicer is no longer required to advance principal and interest, but Ginnie Mae requires servicers to advance principal and interest until the default is resolved. On April 21, 2020, the FHFA confirmed that servicers of GSE loans will only be required to advance four months of mortgage payments, regardless of whether the GSEs repurchase the loans from the trust after 120 days of delinquency. Fed. Hous. Fin. Agency, *FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance* (Apr. 21, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx>.

<sup>49</sup> Press Release, Mortg. Bankers Ass'n, *Share of Mortgage Loans in Forbearance Declines to 5.22%* (Feb. 22, 2021), <https://www.mba.org/2021-press-releases/february/share-of-mortgage-loans-in-forgbearance-declines-to-522-percent>.

Figure 2



Source: Black Knight, Inc.

Because many mortgage servicers also originate the loans they service, many creditors, as well as several warehouse providers,<sup>50</sup> initially responded to the risk of elevated forbearances and higher-than-expected monthly advances by imposing credit overlays—*i.e.*, additional underwriting standards—for new originations. These new underwriting standards included more stringent requirements for non-QM, jumbo, and government loans.<sup>51</sup> An “adverse market fee” of 50 basis points on most refinances became effective for new originations delivered to the GSEs on or after December 1, 2020, to cover projected losses due to forbearances, the foreclosure moratoriums, and other default servicing expenses.<sup>52</sup> However, due to refinance origination profits resulting from historically low interest rates, the leveling off in forbearance rates, and actions taken at the Federal level to alleviate servicer liquidity pressure,<sup>53</sup> concerns over non-bank liquidity, and related credit overlays have eased, although Federal regulators continue to monitor the situation.<sup>54</sup> Nonetheless, access to credit for higher-risk but creditworthy consumers remains an ongoing concern given continued uncertainty over the impact of the expiration of

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<sup>50</sup> Warehouse providers are creditors that provide financing to mortgage originators and servicers to fund and service loans.

<sup>51</sup> Maria Volkova, *FHA/VA Lenders Raise Credit Score Requirements*, Inside Mortg. Fin. (Apr. 3, 2020), <https://www.insidemortgagefinance.com/articles/217636-fhava-lenders-raise-fico-credit-score-requirements> (on file).

<sup>52</sup> Press Release, Fed. Hous. Fin. Agency, *Adverse Market Refinance Fee Implementation now December 1* (Aug. 25, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/Adverse-Market-Refinance-Fee-Implementation-Now-December-1.aspx>.

<sup>53</sup> On April 10, 2020, Ginnie Mae released guidance on a Pass-Through Assistance Program whereby Ginnie Mae will provide financial assistance at a fixed interest rate to servicers facing a principal and interest shortfall as a last resort. Ginnie Mae, *All Participant Memorandum (APM) 20-03: Availability of Pass-Through Assistance Program for Participants in Ginnie Mae’s Single-Family MBS Program* (Apr. 10, 2020), [https://www.ginniemae.gov/issuers/program\\_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=105](https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=105). On April 7, 2020, Ginnie Mae also announced approval of a servicing advance financing facility, whereby mortgage servicing rights are securitized and sold to private investors. Press Release, Ginnie Mae, *Ginnie Mae approves private market servicer liquidity facility* (Apr. 7, 2020), <https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=194>.

<sup>54</sup> Fin. Stability Oversight Council, U.S. Dep’t of the Treasury, *2020 Annual Report*, at 169, <https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf>.

foreclosure moratoriums and COVID-19 forbearance plans on the mortgage market as well as lender capacity constraints due to strong refinance demand.

### III. Legal Authority

The Bureau is proposing to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the “consumer financial protection functions” previously vested in certain other Federal agencies, including the Board. The Dodd-Frank Act defines the term “consumer financial protection function” to include “all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.”<sup>55</sup> Title X of the Dodd-Frank Act (including section 1061), along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.<sup>56</sup>

#### A. TILA

*TILA section 105(a)*. Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.<sup>57</sup> A purpose of TILA is “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various

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<sup>55</sup> 12 U.S.C. 5581(a)(1)(A).

<sup>56</sup> Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining “Federal consumer financial law” to include the “enumerated consumer laws” and the provisions of title X of the Dodd-Frank Act), Dodd-Frank Act section 1002(12)(O), 12 U.S.C. 5481(12)(O) (defining “enumerated consumer laws” to include TILA).

<sup>57</sup> 15 U.S.C. 1604(a).

credit terms available to him and avoid the uninformed use of credit.”<sup>58</sup> Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.<sup>59</sup> The Bureau is proposing to issue this proposed rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

*TILA section 129C(b)(2)(A).* TILA section 129C(b)(2)(A)(vi) provides the Bureau with authority to establish guidelines or regulations relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i).<sup>60</sup> The Bureau is proposing to issue this proposed rule pursuant to its authority under TILA section 129C(b)(2)(A)(vi).

*TILA section 129C(b)(3)(A), (B)(i).* TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.<sup>61</sup> In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe

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<sup>58</sup> 15 U.S.C. 1601(a).

<sup>59</sup> 15 U.S.C. 1639b(a)(2).

<sup>60</sup> 15 U.S.C. 1639c(b)(2)(A).

<sup>61</sup> 15 U.S.C. 1639c(b)(3)(B)(i).

regulations to carry out the purposes of section 129C.<sup>62</sup> The Bureau is proposing to issue this proposed rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

#### *B. Dodd-Frank Act*

*Dodd-Frank Act section 1022(b).* Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.<sup>63</sup> TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is proposing to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

#### **IV. Section-by-Section Analysis**

##### *1026.43 Minimum Standards for Transactions Secured by a Dwelling*

The General QM Final Rule established a March 1, 2021 effective date and a July 1, 2021 mandatory compliance date. Comment 43-2 explains that, for transactions for which a creditor received the consumer's application on or after March 1, 2021, and prior to July 1, 2021, creditors seeking to originate General QMs have the option of complying with either the revised General QM loan definition or the version of the General QM loan definition that was in effect prior to March 1, 2021. This comment also explains that, for transactions for which a creditor received the consumer's application on or after July 1, 2021, creditors seeking to originate General QMs must use the revised General QM loan definition.

Additionally, under the Patch Extension Final Rule, the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date

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<sup>62</sup> 15 U.S.C. 1639c(b)(3)(A).

<sup>63</sup> 12 U.S.C. 5512(b)(1).



the applicable GSE ceases to operate under conservatorship, whichever comes first. Therefore, creditors seeking to originate QMs have the additional option of complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either July 1, 2021 or the date the applicable GSE ceases to operate under conservatorship, whichever comes first.

The Bureau is proposing to delay the mandatory compliance date of the General QM Final Rule until October 1, 2022. Specifically, the proposal would amend comment 43-2 to extend the mandatory compliance date of the General QM Final Rule by changing July 1, 2021, where it appears in that comment, to October 1, 2022. As discussed below in the section-by-section analysis of § 1026.43(e)(2), the Bureau is also proposing to add comment 43(e)(2)-1 to clarify that both the General QM loan definition that was in effect prior to the effective date of the General QM Final Rule and the General QM loan definition as amended by the General QM Final Rule are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. Finally, as discussed below in the section-by-section analysis of § 1026.43(e)(4), the Bureau is proposing to change July 1, 2021, where it appears in the commentary to § 1026.43(e)(4), to October 1, 2022.

This proposal would extend by 15 months—from July 1, 2021 to October 1, 2022—the period during which the revised General QM loan definition, the General QM loan definition that was in effect prior to March 1, 2021, and the Temporary GSE QM loan definition all would be available to creditors. Specifically, for transactions for which a creditor received the consumer's application on or after March 1, 2021 and prior to October 1, 2022, creditors seeking to originate General QMs would have the option of complying with either the revised General QM loan definition or the version of the General QM loan definition that was in effect prior to March 1,

2021. For transactions for which a creditor received the consumer’s application on or after October 1, 2022, creditors seeking to originate General QMs would have to use the revised General QM loan definition. Additionally—because the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date the applicable GSE ceases to operate under conservatorship—creditors seeking to originate QMs would have the additional option of complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either October 1, 2022 or the date the applicable GSE ceases to operate under conservatorship, whichever comes first.

*Reasons the General QM Final Rule Adopted the July 1, 2021 Mandatory Compliance Date*

The General QM Final Rule adopted a mandatory compliance date of July 1, 2021 because the Bureau concluded that this date would give creditors and the secondary market sufficient time—approximately six months from the date the Bureau expected that final rule to be published in the *Federal Register*—to prepare to comply with the General QM Final Rule’s amendments to the ATR/QM Rule.<sup>64</sup> The General QM Final Rule noted that the COVID-19 pandemic had significantly disrupted the mortgage market.<sup>65</sup> Nevertheless, the Bureau finalized a July 1, 2021 mandatory compliance date, taking into consideration market conditions at the time and concerns about the perceived negative effects of the Temporary GSE QM loan definition on the market.

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<sup>64</sup> The Bureau stated that, with respect to the price-based thresholds in revised § 1026.43(e)(2)(vi), the Bureau understood that creditors currently calculate the APR and APOR for mortgage loans. The Bureau also stated that the revised requirements generally reflected existing market practices and that creditors currently used and were familiar with the verification standards that the General QM Final Rule adopted. The Bureau also concluded that the General QM Final Rule would be less complex to implement relative to other rules the Bureau has issued, such as the January 2013 Final Rule or TILA-RESPA Integrated Disclosure Rule. 85 FR 86308, 86385-86 (Dec. 29, 2020).

<sup>65</sup> *Id.* at 86313-15.

Some commenters on the Patch Extension Proposal<sup>66</sup> and the General QM Proposal<sup>67</sup> cited the pandemic in requesting that the Bureau take different approaches to extending the Temporary GSE QM loan definition and revising the General QM loan definition than the Bureau had proposed. Several commenters on the Patch Extension Proposal asked the Bureau to extend the Temporary GSE QM loan definition to expire several months *after* the date creditors would be required to transition from the old General QM loan definition to the new definition. Among the reasons cited for the request was that the pandemic was straining creditors' resources and personnel, making it more difficult for creditors to adapt to the new definition. A few of these commenters stated that an overlap period, during which creditors could continue to make QMs under the Temporary GSE QM loan definition after the date creditors would be required to transition to the revised General QM loan definition, would reduce the potential that a revised General QM loan definition could disrupt the mortgage market and affect credit access due to unforeseen changes in the economy or the mortgage market due to the pandemic.<sup>68</sup>

The Bureau declined to adopt an overlap period in the Patch Extension Final Rule. The Bureau concluded that establishing an overlap period that extends past the date creditors are required to transition from the then-current General QM loan definition to the revised General QM loan definition would keep the Temporary GSE QM loan definition in place longer than necessary to facilitate a smooth and orderly transition to a revised General QM loan definition. The Bureau stated that it sought to maintain the Temporary GSE QM loan definition only as long as necessary to facilitate a smooth and orderly transition to a revised General QM loan definition,

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<sup>66</sup> 85 FR 41448 (July 10, 2020). The Patch Extension Proposal was the proposed rule that the Bureau issued in connection with the Patch Extension Final Rule.

<sup>67</sup> 85 FR 41716 (July 10, 2020). The General QM Proposal was the proposed rule that the Bureau issued in connection with the General QM Final Rule.

<sup>68</sup> 85 FR 67938, 67949 (Oct. 26, 2020).

and no longer, because the Bureau concluded that the Temporary GSE QM loan definition has certain negative effects on the mortgage market, including stifling innovation and the development of competitive private-sector approaches to underwriting. The Bureau further concluded that, as long as the Temporary GSE QM loan definition continued to be in effect, the non-GSE private market was less likely to rebound and that the existence of the Temporary GSE QM loan definition may have been limiting the development of the non-GSE private market. For these reasons, the Bureau concluded that it was appropriate for the Temporary GSE QM loan definition to remain in place no longer than the date creditors are required to transition from the then-current General QM loan definition to the revised General QM loan definition.<sup>69</sup> (The Bureau also cited these negative effects in declining to make the Temporary GSE QM loan definition permanent.)<sup>70</sup> With respect to commenters' concerns related to the pandemic, the Bureau stated that conditions in the mortgage market did not justify extending the Temporary GSE QM loan definition past the date creditors would be required to transition from the then-current General QM loan definition to the revised definition, particularly in light of the aforementioned concerns the Bureau stated about the negative effects of the Temporary GSE QM loan definition on the mortgage market.<sup>71</sup>

In the General QM Final Rule, several industry commenters requested a longer implementation period than the six-month period the Bureau proposed. Some of these commenters stated that the implementation period should account for other simultaneous challenges for creditors, including responding to the COVID-19 pandemic and its economic

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<sup>69</sup> *Id.* at 67951. Several commenters on the General QM Proposal also requested that the Bureau adopt an overlap period. The Bureau declined to adopt an overlap period in the General QM Final Rule for the same reasons it declined to adopt an overlap period in the Patch Extension Final Rule. 85 FR 86308, 86385 (Dec. 29, 2020).

<sup>70</sup> 85 FR 67938, 67953 n.141 (Oct. 26, 2020).

<sup>71</sup> *Id.* at 67953.

effects. The Bureau concluded that a six-month implementation period would give creditors and secondary market participants enough time to prepare to comply with the final rule, even in light of these challenges. The Bureau stated that current market conditions did not require a longer implementation period.<sup>72</sup>

In addition, two commenters that submitted a joint comment letter on the Patch Extension Proposal stated that the Temporary GSE QM loan definition should remain in place until the Bureau assesses the impacts of the pandemic on mortgage markets, including the decline of the non-QM market and creditors' increasing reliance on GSE and FHA loans.<sup>73</sup> In their comments on the General QM Proposal, some consumer advocate commenters and an individual commenter requested that the Bureau pause the General QM rulemaking in light of the pandemic. The consumer advocate commenters cited the turmoil and economic fallout from the pandemic as a reason to pause the rulemaking.<sup>74</sup>

The Bureau declined to extend the Temporary GSE QM loan definition indefinitely while the Bureau further assessed the impact of the pandemic or to pause the General QM rulemaking in light of the pandemic. However, in the Patch Extension Final Rule, the Bureau noted that, if market conditions were to change or other circumstances were to arise before the Bureau issued the General QM Final Rule, the Bureau could extend the Temporary GSE QM loan definition for a longer period of time.<sup>75</sup>

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<sup>72</sup> 85 FR 86308, 86385 (Dec. 29, 2020).

<sup>73</sup> 85 FR 67938, 67950 (Oct. 26, 2020).

<sup>74</sup> 85 FR 86308, 86333 (Dec. 29, 2020).

<sup>75</sup> 85 FR 67938, 67953 (Oct. 26, 2020).

### *Reasons for the Proposed Extension of the Mandatory Compliance Date*

The Bureau is issuing this proposal because it has preliminarily concluded that maintaining the July 1, 2021 mandatory compliance date may leave some struggling homeowners with fewer options by reducing the flexibility of creditors to respond to the effects of the pandemic. In the Patch Extension Final Rule and the General QM Final Rule, the Bureau noted the disruptive effects of the pandemic on the mortgage market but nevertheless concluded that these effects did not justify delaying the requirement to comply with the revised General QM loan definition on July 1, 2021. Upon further evaluation, the Bureau is concerned that it may not have given sufficient weight to the potential risk that mandating the transition to the price-based approach in the revised General QM loan definition on July 1, 2021 could restrict options for consumers struggling with the disruptive effects of the pandemic. The Bureau preliminarily concludes that maximizing flexibility to respond to the effects of the pandemic, by delaying the mandatory compliance date until October 1, 2022, outweighs concerns that an extension of the mandatory compliance date could stifle the development of private-sector approaches to underwriting or a rebound of the non-GSE private market in the near term.

The Bureau also believes that the adverse impact of the pandemic on mortgage markets may persist longer than anticipated at the time of publication of the General QM Final Rule. In particular, as discussed in more detail below, with the extension of certain forbearance programs and foreclosure moratoriums, the Bureau believes that the potential for disruption in the mortgage market will persist well past July 2021.

The Bureau notes that this rulemaking does not reconsider the merits of the price-based approach adopted in the General QM Final Rule. The revised General QM loan definition went into effect on March 1, 2021, and creditors have the option of using that definition to originate

QMs. Rather, this proposal addresses the narrower question of whether it would be appropriate in light of the continuing disruptive effects of the pandemic to help facilitate greater creditor flexibility and expanded availability of responsible, affordable credit options for some struggling consumers by allowing creditors to continue making QMs under the DTI-based General QM loan definition and under the Temporary GSE QM loan definition until October 1, 2022.

The Bureau is concerned that requiring creditors seeking to make QM loans to shift to the price-based General QM loan definition and limiting their ability to rely on the Temporary GSE QM loan definition and on the DTI-based General QM loan definition on July 1, 2021 could reduce access to credit, particularly for certain consumer segments. The Bureau has two separate concerns related to access to responsible, affordable mortgage credit, as detailed further below. First, the Bureau believes that ongoing regulatory interventions to assist consumers who may have suffered an income disruption related to the pandemic—such as COVID-19 forbearance plans and foreclosure moratoriums—and potential disruptions in the market when those interventions expire may warrant an extension of the mandatory compliance date. Second, the Bureau has concerns about mortgage credit availability for some creditworthy consumers who would qualify for a mortgage but for the disruptive market effects of the pandemic, and such concerns may warrant an extension of the mandatory compliance date.

*Impact of foreclosure moratoriums and the expiration of COVID-19 forbearance plans.*

The Bureau is issuing this proposal because it is concerned that the impact of the eventual expiration of foreclosure moratoriums and COVID-19 forbearance plans described in part II.D above has the potential to lead to additional disruptions in the mortgage markets. In particular, the Bureau is concerned that such expirations may create the potential for heightened delinquencies and foreclosures for consumers who continue to suffer disruptions in their income

due to the COVID-19 pandemic. The Bureau is concerned that, while many consumers currently in forbearance plans can be assisted through payment deferrals and loan modifications, there will be some consumers who will be unable to either resume their mortgage payment or sustain a modified loan payment and will be forced to either sell their homes or be placed into foreclosure after the expiration of the foreclosure moratoriums. The Bureau is concerned that it may not have given sufficient weight to these issues in mandating that creditors comply with the price-based approach on July 1, 2021. In addition, the Bureau believes that the extension of certain forbearance programs and foreclosure moratoriums may result in these effects continuing longer than the Bureau anticipated at the time of the General QM Final Rule.

The Bureau preliminarily concludes that extending the mandatory compliance date of the General QM Final Rule to October 1, 2022 will provide additional flexibility to creditors originating QM loans. Specifically, creditors would be permitted to originate General QM loans under the price-based General QM loan definition that took effect on March 1, 2021, and would also be allowed to originate General QM loans in accordance with the DTI-based General QM loan definition that was in effect prior to March 1, 2021, as well as Temporary GSE QM loans, for an additional 15 months. As discussed in further detail in this section, the Bureau is issuing this proposal because providing such flexibility may benefit struggling consumers who are forced to sell their property to avoid foreclosure by helping to ensure that potential purchasers continue to have access to mortgage credit. The following section (entitled *Concerns regarding access to mortgage credit for consumers*) describes the Bureau's concerns that despite record origination volume, access to credit has remained relatively tight for consumers with weaker credit. Moreover, this proposal may also provide some consumers with additional opportunities to refinance into historically low interest rates.



The Bureau is concerned that the potential impact of the COVID-19 pandemic on the mortgage market may continue for longer than anticipated at the time the Bureau issued the General QM Final Rule, and so could warrant additional flexibility in the QM market to ensure creditors are able to accommodate struggling consumers. Specifically, as discussed in part II.D, the expiration dates for the foreclosure moratoriums and enrollment dates for the COVID-19 forbearance plans have been extended for loans guaranteed or insured by the GSEs, FHA, VA, and USDA since the publication of the Patch Extension Final Rule and the General QM Final Rule. Both the GSEs and the government agencies have also lengthened the permissible forbearance period from the 12 months mandated in the CARES Act to up to 18 months for certain loans. Under these revised timelines, most COVID-19 forbearance plans will expire no later than June 30, 2022.

The Bureau is concerned that the combined impact of the expiration of the foreclosure moratoriums and the expiration of the COVID-19 forbearance plans creates the potential for heightened delinquencies and foreclosures for consumers who continue to suffer disruptions in their income due to the COVID-19 pandemic. While many consumers currently in forbearance plans can be assisted through payment deferrals and loan modifications, there will be some consumers who will be unable to sustain a modified loan payment and will be forced to sell their homes to avoid foreclosure. While rising house prices have increased overall home equity, which will assist consumers who need to sell their homes upon the expiration of their forbearance plan, more vulnerable consumers are likely to have less equity in their homes than the general population. One analysis indicated that 10.4 percent of mortgage consumers in forbearance have less than 10 percent equity in their homes to pay for closing costs, and this share increases to 15.3 percent after taking into account 12 months of deferred interest during the

forbearance period.<sup>76</sup> If consumers have deferred payments of taxes and insurance, their equity position will have eroded even further. Government loans, which tend to have higher loan-to-value ratios (LTVs) and serve a higher-risk population, have a median LTV at origination of 96.5 percent as compared to 75 percent LTV for mortgage borrowers overall.<sup>77</sup> Accordingly, nearly 20 percent of FHA and VA mortgages have less than 10 percent equity, and the share increases to 26 percent when taking into account deferred interest.<sup>78</sup> While some research suggests borrowers with government loans have an average 22 percent equity buffer given recent home price appreciation, certain borrower segments and States and localities may remain at risk of heightened foreclosure activity.<sup>79</sup> While the foreclosures and distressed sales are expected to remain far below the levels experienced during the 2008 financial crisis,<sup>80</sup> the Bureau preliminarily concludes that extending the mandatory compliance date until October 1, 2022, may assist some consumers who need to sell their homes by providing creditors additional flexibility to continue originating new QM loans under the Temporary GSE QM loan definition and under the DTI-based General QM loan definition, as well as under the price-based approach in the revised General QM loan definition. Consumers who need to sell their homes may benefit from a broader QM definition that encourages more potential purchasers to enter the market and buy properties that might otherwise go into foreclosure. Extending the Temporary GSE QM

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<sup>76</sup> Black Knight, Inc., *Deferred Payments During Forbearance Beginning To Erode Equity Positions* (Feb. 3, 2021) <https://www.blackknightinc.com/blog-posts/deferred-payments-during-forbearance-beginning-to-erode-equity-positions/> (*Deferred Payments*).

<sup>77</sup> Ginnie Mae, *Global Markets Analysis Report* (Jan. 2021), [https://www.ginniemae.gov/data\\_and\\_reports/reporting/Documents/global\\_market\\_analysis\\_jan21.pdf](https://www.ginniemae.gov/data_and_reports/reporting/Documents/global_market_analysis_jan21.pdf).

<sup>78</sup> *Deferred Payments*, *supra* note 76.

<sup>79</sup> Urban Inst., *The Predicted Foreclosure Surge Likely Won't Happen, Even among Financially Vulnerable Borrowers* (Feb. 11, 2021), <https://www.urban.org/urban-wire/predicted-foreclosure-surge-likely-wont-happen-even-among-financially-vulnerable-borrowers>.

<sup>80</sup> *Id.*

loan definition may also provide additional flexibility for the GSEs to develop and modify potential pre-foreclosure sale products—such as short sale and deed-in-lieu of foreclosure programs—to respond to a potential increase in distressed sales as necessary.

Under the revised timelines, most COVID-19 forbearance plans will expire no later than June 30, 2022, at which point the availability of the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 could help alleviate adverse impacts on consumers struggling to keep their homes upon exiting their forbearance plan. Extending the mandatory compliance date to October 1, 2022, as the Bureau proposes, would make these additional QM definitions available for three months after the latest date on which most COVID-19 forbearance plans are set to expire. The Bureau preliminarily concludes that three months is a sufficient period of time for creditors to use the additional QM flexibility to assist consumers whose COVID-19 forbearance plans expire on June 30, 2022 and whose incomes may not have recovered enough to sustain their pre-pandemic mortgage payment or a modified mortgage payment.

The Bureau is also concerned that allowing the Temporary GSE QM loan definition to expire on July 1, 2021 would limit the ability of the GSEs to originate new loans and could restrict their flexibility to develop new refinance programs to address emerging consumer needs during a period of heightened market uncertainty. In the General QM Final Rule, the Bureau estimated that the price-based approach in the revised General QM loan definition would preserve access to credit relative to the status quo with the DTI-based General QM loan definition and the Temporary GSE QM loan definition. Nevertheless, some loans that would be QMs under the Temporary GSE QM loan definition or the DTI-based General QM loan definition would not be eligible under the revised, price-based General QM loan definition.

Maintaining the availability of all three QM definitions until October 1, 2022 would maximize refinance options for consumers who have been struggling to make their mortgage payments or who under more ordinary circumstances likely have the ability to repay their loans but who may be underwater on their mortgage as a result of the unique circumstances of the pandemic.

As discussed earlier and illustrated in Figure 1, the GSEs tend to play a dominant role during economic downturns and recoveries, and additional origination flexibilities may prove helpful in the current market recovery by allowing consumers additional opportunities to refinance into historically low interest rates. For example, during the 2008 financial crisis, FHFA established the Home Affordable Refinance Program (HARP) to help homeowners who were unable to refinance their loans due to a decline in their home value. Approximately 3.5 million consumers benefited from HARP, and FHFA found that consumers who refinanced through HARP have had lower delinquency rates compared with consumers who were eligible for HARP but did not refinance through the program.<sup>81</sup> When HARP expired in 2018, FHFA replaced it with the High-LTV Refinance Programs. These programs allow performing high-LTV (>97 percent) borrowers to access rate-and-term refinances without providing full income documentation. These refinances may currently obtain QM status through the Temporary GSE QM loan definition. As discussed earlier, while the Bureau does not expect widespread home price declines akin to the 2008 financial crisis, some segments of consumers and localities could benefit from the existing high-LTV refinance programs. More generally, extending the Temporary GSE QM loan definition would also help ensure that the ATR/QM Rule does not impair FHFA and the GSEs from exercising the flexibility to tailor existing programs to meet

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<sup>81</sup> Fed. Hous. Fin. Agency, *Home Affordable Refinance Program (HARP)*, <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/HARP.aspx> (last visited Feb. 23, 2021).

future market changes specific to the COVID-19 pandemic and the regulatory interventions discussed earlier. The Bureau preliminarily concludes that it would be appropriate to provide such loans with the QM presumption of compliance with the ATR requirements under the Temporary GSE QM loan definition, given that such programs would be implemented while the GSEs are under the conservatorship of FHFA.

The Bureau preliminarily concludes that extending the mandatory compliance date of the General QM Final Rule to October 1, 2022 will benefit consumers by providing additional access to responsible, affordable mortgage credit and flexibility for the GSEs to create and modify programs to address emerging consumer needs. However, the Bureau also recognizes that the anticipated effects of this proposal may be affected by policies, agreements, or legislation created by parties other than the Bureau. For example, the Preferred Stock Purchase Agreements (PSPAs) for Fannie Mae and Freddie Mac or restrictions of FHFA, as regulator and conservator of the GSEs, may restrict the GSEs from purchasing loans with certain attributes or characteristics.<sup>82</sup> To the extent that other factors prevent the GSEs from using the additional flexibilities provided by the extension of the mandatory compliance date and the Temporary GSE QM loan definition, the impacts of this proposed rule may be smaller than they otherwise would be. Nonetheless, the Bureau is issuing this proposal because it is concerned that mandating that creditors comply with the revised General QM loan definition on July 1, 2021 could limit options for consumers struggling due to the disruptive effects of the pandemic, and because the Bureau is unable to predict how such agreements or restrictions might change in the future. Accordingly, the Bureau has preliminarily concluded that the benefits of continued

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<sup>82</sup> On January 14, 2021, the U.S. Department of the Treasury and the FHFA amended the terms of the PSPAs for Fannie Mae and Freddie Mac. Section 5.14(c) was added to the agreement and limits the GSEs' acquisition of certain loans on or after July 1, 2021, including loans that are not qualified mortgages as defined by 12 CFR 1026.43(e)(2), (5), (6), (7) or (f) with certain exceptions.

access to credit for consumers during the pandemic warrant the additional flexibility provided to creditors through this proposed rule.

As noted above, in the Patch Extension Final Rule and the General QM Final Rule, the Bureau declined to extend the Temporary GSE QM loan definition beyond the July 1, 2021 mandatory compliance date of the amendments to the General QM loan definition. The Bureau raised concerns about potential harms from leaving the Temporary GSE QM loan definition in place longer than necessary, including stifling innovation and the development of competitive private-sector approaches to underwriting. The Bureau also stated that, as long as the Temporary GSE QM loan definition continued to be in effect, the non-GSE private market was less likely to rebound and that the existence of the Temporary GSE QM loan definition may have been limiting the development of the non-GSE private market. For these reasons, the Bureau concluded that it was appropriate for the Temporary GSE QM loan definition to remain in place no longer than the date creditors are required to transition from the then-current General QM loan definition to the revised General QM loan definition.<sup>83</sup> The Bureau concluded that the mandatory compliance date, and the expiration of Temporary GSE QM loan definition should occur on July 1, 2021. However, the Bureau now preliminarily concludes that the need to provide maximum flexibility to address the effects of the pandemic outweighs any, likely minor, inhibiting effect that extension of the Temporary GSE QM loan definition could have on new access to credit resulting from new private sector underwriting approaches or a rebound of the non-GSE private market during the same period. Moreover, market participants looking to adopt innovative underwriting approaches or expand the non-GSE market would have the option to use

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<sup>83</sup> 85 FR 67938, 67951 (Oct. 26, 2020). Several commenters on the General QM Proposal also requested that the Bureau adopt an overlap period. The Bureau declined to adopt an overlap period in the General QM Final Rule for the same reasons it declined to adopt an overlap period in the Patch Extension Final Rule. 85 FR 86308, 86385 (Dec. 29, 2020).

the price-based General QM loan definition even if the mandatory compliance period were delayed until October 1, 2022. Accordingly, the Bureau preliminarily concludes that leaving the Temporary GSE QM loan definition in place until October 1, 2022 may be appropriate.

*Concerns regarding access to mortgage credit for consumers.* The Bureau is also proposing to extend the mandatory compliance date of the General QM Final Rule to avoid a reduction in credit access for certain consumers who have been unable to purchase or refinance due to the effects of the pandemic on the origination market. As described further below, the Bureau is concerned that despite the record origination volumes, access to low interest-rate refinances and purchase mortgages in these unique circumstances may be less widely available for consumers with weaker credit relative to consumers with stronger credit. The Bureau is concerned that requiring creditors to transition to the price-based General QM loan definition on July 1, 2021 and eliminating the Temporary GSE QM loan definition and the DTI-based General QM loan definition at that time could exacerbate these credit access concerns.

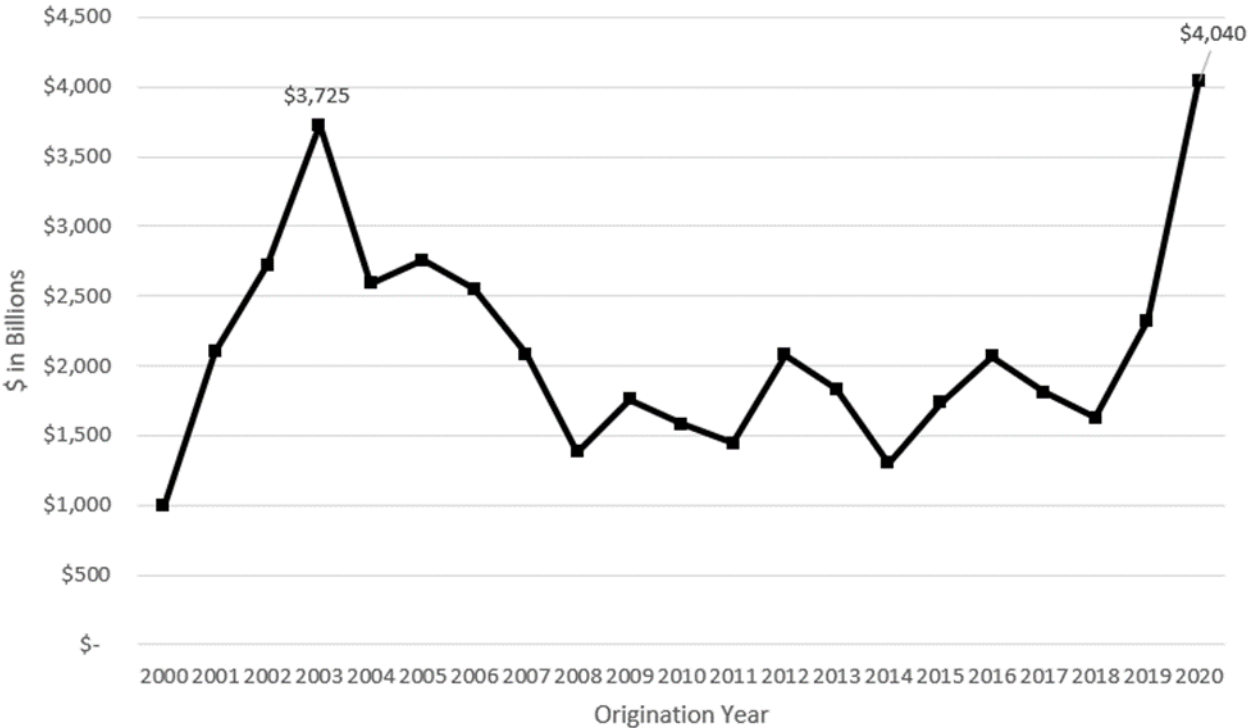
As illustrated in Figure 3, first-lien mortgage originations exceeded \$4 trillion in 2020, surpassing the prior record of \$3.725 trillion set in 2003,<sup>84</sup> and originators have faced significant capacity and resource constraints given strong refinance demand. In addition, the Board has undertaken extraordinary interventions to purchase agency MBS in large quantities since March of 2020, which has exerted downward pressure on MBS yields and thus increased liquidity for creditors who rely on the ability to sell GSE and government loans in the secondary markets.<sup>85</sup>

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<sup>84</sup> Inside Mortg. Fin., *One for the Ages: Home Lenders Set New Production Record of \$4T-Plus* (Jan. 27, 2021) <https://www.insidemortgagefinance.com/articles/220379-one-for-the-ages-home-lenders-set-new-production-record-of-4t-plus> (on file).

<sup>85</sup> *Housing Finance at a Glance*, *supra* note 36.

Figure 3: First Lien Mortgage Originations by Year



Source: Inside Mortgage Finance



The combination of mortgage origination capacity constraints and increased liquidity in the agency MBS market has led creditors to focus on GSE originations, which are quicker to close and are generally considered less risky than FHA-insured mortgages and loans originated in the private markets. In the short-run, these pandemic-related capacity constraints could cause the supply of mortgage credit to fall short of demand from otherwise creditworthy consumers who likely have the ability to repay. In response, creditors may impose credit overlays or, more commonly, increase pricing margins<sup>86</sup> for certain products that are time-consuming to underwrite or for higher-risk consumers, including margin increases beyond the risk-based pricing adjustments typically charged in a market without creditor capacity constraints. Creditors may raise prices disproportionately for loans that either take longer to close or have a lower probability of closing to compensate for the fact that such loans reduce a creditor's total expected origination volume within a given time period. Overall, these short-run responses to the pandemic-related capacity constraints could have the effect of temporarily pricing some creditworthy consumers out of the market or delaying their ability to obtain a mortgage they otherwise could repay.

Figure 2 illustrates the strong growth of GSE lending in recent months, showing GSE volume in the third quarter of 2020 was at 61.9 percent, up from 45.3 percent a year prior. By contrast, portfolio lending declined significantly to 19.6 percent in the third quarter of 2020, compared to 33.3 percent in the third quarter of 2019. Private label securitizations declined to 1 percent from 1.8 percent a year prior, and even the FHA and VA share (whose MBS are

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<sup>86</sup> Pricing margins refer to the difference between the rate a creditor charges and the price at which a creditor can sell the loan in the secondary market. In addition to risk-based pricing adjustments that are independent of any adjustments charged in the secondary market, a creditor may charge additional margin to compensate for the time and expense of underwriting.

beneficiaries of the Board's agency MBS purchases) are down slightly to 17.4 percent from 19.5 percent a year prior.<sup>87</sup>

Even within the GSE and government markets, some consumers may face reduced access to credit, as capacity constraints cause mortgage originators to focus on consumers with the strongest credit.<sup>88</sup> Figure 4 illustrates potential differences in new credit originated for consumers with credit scores above and below a 700 credit score in 2020.<sup>89</sup> Year-over-year, mortgage balances for consumers with a credit score of at least 700 have increased by 10 percent by the end of 2020, while mortgage balances for consumers with a credit score below 700 have decreased by nearly 2 percent. In contrast, the auto financing sector has a far smaller disparity that also remained more consistent throughout the year.

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<sup>87</sup> *Id.*

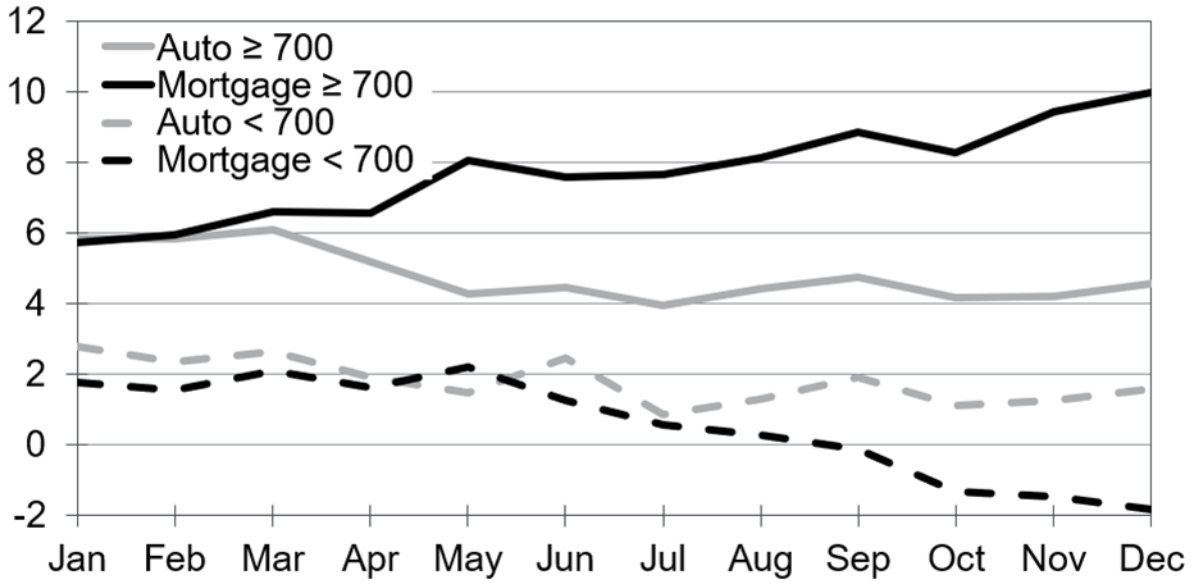
<sup>88</sup> Nat'l Mortg. News, *Opinion: The originations feast and credit famine* (Oct. 4, 2020), <https://www.nationalmortgagenews.com/opinion/the-originations-feast-and-credit-availability-famine> (on file).

<sup>89</sup> Moody's Analytics Credit Forecast.

Figure 4

## Secured Strength in High Credit Scores

Outstanding balances, % chg yr ago



Sources: Equifax, Moody's Analytics Credit Forecast

As noted, the Bureau is concerned about the July 1, 2020 mandatory compliance date of the General QM Final Rule because requiring creditors to transition to the price-based General QM loan definition on July 1, 2021, and eliminating the Temporary GSE QM loan definition and the DTI-based General QM loan definition, could exacerbate these pandemic-related concerns about access to credit for some consumers. In the General QM Final Rule, the Bureau stated that maintaining access to responsible, affordable mortgage credit after the expiration of the Temporary GSE QM loan definition was a critical policy goal, and the Bureau found that the price-based approach would further this goal.<sup>90</sup> The Bureau concluded that the General QM Final Rule's pricing thresholds best balanced consumers' ability to repay with ensuring access to responsible, affordable mortgage credit, including for minority consumers.<sup>91</sup> However, compared to a market in which creditors could originate QM loans under the price-based approach in the revised General QM loan definition, the DTI-based General QM loan definition, or under the Temporary GSE QM loan definition, there would be a slightly smaller QM market and potentially reduced access to credit in a market in which creditors were limited to making General QM loans under the revised, price-based General QM loan definition. Extending the mandatory compliance date would retain flexibility for creditors to originate loans as QMs under the Temporary GSE QM loan definition and revised General QM loan definition for a longer period of time. Given the mortgage origination capacity concerns and the concentration of loans in the GSE channel described above, the Bureau preliminarily concludes it is appropriate to extend the mandatory compliance date of the General QM Final Rule to October 1, 2022 to

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<sup>90</sup> 85 FR 86308, 86335 (Dec. 29, 2020).

<sup>91</sup> *Id.* at 86337.

ensure broad credit access under the particular circumstances arising from the COVID-19 pandemic, including for loans in the GSE channel.

In addition, the Bureau preliminarily concludes that retaining a broad QM market until October 1, 2022, in which creditors could make QMs under the price-based approach in the revised General QM loan definition, the DTI-based General QM loan definition, or the Temporary GSE QM loan definition, would not significantly increase the likelihood that risky loans would inappropriately receive a rebuttable presumption of compliance with ability to repay requirements. In general, the Bureau expects that creditors will use comparable underwriting for loans within the DTI-based General QM loan definition and the Temporary GSE QM loan definition between July 1, 2021 and October 1, 2022 as they did for loans originated using those same definitions prior to March 1, 2021. As a result, the Bureau expects QM loans originated between July 1, 2021 and October 1, 2022, using the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition, will have comparable risk levels to QM loans originated under those same definitions prior to March 1, 2021.

Moreover, given the above-noted concerns about access to credit for certain consumers in the existing market, the Bureau has concerns about requiring creditors to transition to the price-based approach in the General QM loan definition on July 1, 2021. In part V.B.5 of the General QM Final Rule,<sup>92</sup> the Bureau acknowledged that overall market spreads may expand and tighten over time. The Bureau noted that it monitors changing market and economic conditions, and it could consider changes to the pricing thresholds if circumstances warrant. The Bureau is concerned that, in the unique circumstances arising from the COVID-19 pandemic, the combined effects of strong refinance demand, capacity constraints, and the volume of consumers with

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<sup>92</sup> *Id.* at 86339.

COVID-19 forbearance plans could incentivize creditors to increase mortgage interest rate spreads for some higher-risk consumers relative to consumers with cleaner credit. The Bureau is concerned that this unique situation may result in temporarily reduced credit access for some higher-risk yet creditworthy consumers than otherwise would be the case. Specifically, loans that exceed the pricing thresholds in the General QM Final Rule—including loans with DTI ratios below 43 percent and GSE loans—will generally not be eligible for QM status if the application is received on or after the mandatory compliance date of the General QM Final Rule. This includes some manufactured housing loans with loan amounts in excess of \$110,260. While some of these consumers may be able to obtain QM loans due to creditor pricing responses or through other available QM loan categories, and other consumers may obtain non-QM loans at potentially higher prices, the Bureau is concerned that a portion of these consumers may not be able to obtain a mortgage at all. The Bureau anticipates that as mortgage rates increase, capacity constraints will be lifted, originator profitability will decline, and these access to credit concerns will eventually ease. Accordingly, given that the timing of these events is uncertain, the Bureau has preliminarily concluded that extending the mandatory compliance date to October 1, 2022 will assist consumers by avoiding unnecessarily constraining the mortgage market during a period of heightened volatility and stress due to the COVID-19 pandemic.

The Bureau requests comment on all aspects of its proposal to delay the mandatory compliance date of the General QM Final Rule until October 1, 2022. The Bureau requests comment on whether the market is likely to experience disruptions after the expiration of forbearance programs and foreclosure moratoriums and whether delaying the mandatory compliance date could provide additional flexibility in responding to those disruptions. The Bureau also requests comment on the extent to which some consumer segments are experiencing

impaired access to credit and on whether delaying the mandatory compliance date could help address such access-to-credit concerns. The Bureau requests comment on whether the mandatory compliance date should be extended and, if so, whether the extension should be longer or shorter than the proposed delay to October 1, 2022.

The Bureau also proposes that a final rule based on this proposal be effective 60 days after publication in the *Federal Register*. The Bureau anticipates that this would make the final rule effective before the current July 1, 2021 mandatory compliance date.

#### *Proposed Revisions to Commentary*

For the reasons described above, the Bureau is proposing to amend comment 43-2 to reflect an extension of the mandatory compliance date of the price-based General QM loan definition to October 1, 2022.

Currently, comment 43-2 states that the Bureau's revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after March 1, 2021 (effective date). Comment 43-2 states further that compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after July 1, 2021 (mandatory compliance date). Comment 43-2 states further that, for a given transaction for which a creditor received an application on or after March 1, 2021 but prior to July 1, 2021, a person has the option of complying either with 12 CFR part 1026 as it is in effect, or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the 2021 General QM Amendments.

For the reasons described above, the Bureau proposes to change the references to July 1, 2021 in this comment to October 1, 2022. The proposal would not amend the portion of comment 43-2 that describes how to determine the application date. The explanations in part VII.C of the Supplementary Information to the General QM Final Rule regarding how the effective date, optional early compliance period, and mandatory compliance date apply to transactions would remain accurate, except that references to July 1, 2021 would apply to October 1, 2022 instead.<sup>93</sup>

#### *43(e) Qualified Mortgages*

##### *43(e)(2) Qualified Mortgages Defined—General*

The Bureau is proposing to add comment 43(e)(2)-1 to clarify the General QM loan definitions available to creditors for applications received on or after March 1, 2021 but prior to October 1, 2022. Specifically, proposed comment 43(e)(2)-1 references comment 43-2 and explains that, prior to the effective date of the 2021 General QM Amendments, § 1026.43(e)(2) provided a QM definition that, among other things, required that the ratio of the consumer's total monthly debt to total monthly income at the time of consummation may not exceed 43 percent. Proposed comment 43(e)(2)-1 further explains that the 2021 General QM Amendments removed that requirement and replaced it with the APR thresholds in § 1026.43(e)(2)(vi), among other revisions. Proposed comment 43(e)(2)-1 explains that both the QM definition in § 1026.43(e)(2) that was in effect prior to the 2021 General QM Amendments and the General QM loan definition in § 1026.43(e)(2) as amended by the 2021 General QM Amendments are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. Proposed comment 43(e)(2)-1 cross-references comment 43-2 for

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<sup>93</sup> 85 FR 86308, 86386-87 (Dec. 29, 2020).



an explanation of how creditors determine the date the creditor received the consumer's application for purposes of that comment.

#### *43(e)(4) Qualified Mortgage Defined—Other Agencies*

Comment 43(e)(4)-2 currently provides that covered transactions that met the requirements of § 1026.43(e)(2)(i) through (iii), 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 for which the creditor received the consumer's application prior to the mandatory compliance date of July 1, 2021, continue to be QMs, including those covered transactions that were consummated on or after July 1, 2021. The headers for comments 43(e)(4)-2 and -3 refer to July 1, 2021 as the General QM Final Rule's mandatory compliance date.

For the reasons described above, the Bureau proposes to change the references to July 1, 2021 in comment 43(e)(4)-2 and in the headers for comments 43(e)(4)-2 and -3 to October 1, 2022.

## **V. Dodd-Frank Act Section 1022(b) Analysis**

### *A. Overview*

As discussed above, this proposal would delay the mandatory compliance date of the General QM loan definition from July 1, 2021 to October 1, 2022. In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act. Specifically, section 1022(b)(2)(A) of the Dodd-Frank

Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with the prudential regulators and other appropriate Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

### *B. Data and Evidence*

The discussion in this impact analysis relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA<sup>94</sup> data, as well as other publicly available sources. In particular, the data and evidence published in the Bureau's General QM Final Rule inform this analysis. The Bureau also conducted the Assessment and issued the Assessment Report as required under section 1022(d) of the Dodd-Frank Act. The Assessment Report provides quantitative and qualitative information on questions relevant to the proposed rule, including the effect of QM status relative to non-QM status on access to credit. Consultations with other regulatory agencies, industry, and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, pricing, and performance of mortgage loans originated in recent years. While

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<sup>94</sup> HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether creditors are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C. See Bureau of Consumer Fin. Prot., *Mortgage Data (HMDA)*, <https://www.consumerfinance.gov/data-research/hmda/>.

these data allow the Bureau to estimate the number of mortgage loans historically that would have satisfied the different QM definitions applicable under the baseline or the proposal, the Bureau cannot estimate with precision how consumers may respond to changes in the QM definitions by obtaining alternative loan products or how creditors may respond by changing loan pricing or product offerings. The Bureau seeks additional information or data which could inform quantitative estimates of such consumer or creditor responses. The Bureau seeks comment on its analysis and additional information or data which could inform quantitative estimates of the number of consumers obtaining GSE-eligible loans which do not satisfy the consider and verify requirements in the revised General QM loan definition.

### *C. Description of the Baseline*

The Bureau considers the benefits, costs, and impacts of the proposal against the baseline in which the Bureau takes no action and compliance with the revised General QM loan definition becomes mandatory on July 1, 2021, after which the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 expire and can no longer be used by creditors to obtain QM status on new mortgage loans. Under the proposal, the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 can continue to be used until October 1, 2022, the new mandatory compliance date of the revised General QM loan definition. As a result, the proposal's direct market impacts would occur only during the period between July 1, 2021 and October 1, 2022. The impact analyses assume the GSEs will remain in conservatorship for the duration of this period, thus allowing creditors to use the Temporary GSE QM loan definition.

Under the baseline, when the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 expire on July 1, 2021, conventional

loans could only receive QM status under the Bureau's rules by underwriting according to the revised General QM requirements, Small Creditor QM requirements, Balloon Payment QM requirements, the expanded portfolio QM amendments created by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act,<sup>95</sup> or the Seasoned QM definition. The revised General QM loan definition, which would be the only type of QM available to larger creditors following the mandatory compliance date, generally requires loans to be priced less than 2.25 percentage points above APOR.<sup>96</sup>

The Bureau anticipates that when the mandatory compliance date is reached, the main loans affected would be those priced 2.25 percentage points or higher above APOR that are either conventional loans with DTI ratios at or below 43 percent (Under-43-Percent-DTI conventional loans) or GSE-eligible loans. Retaining the July 1, 2021 mandatory compliance date would affect these loans because they are currently originated as QM loans due to either the General QM loan definition that was in effect prior to March 1, 2021 or the Temporary GSE QM loan definition but, absent changes in pricing, could not be originated as QM loans and may not be originated at all after the mandatory compliance date.

The Bureau's analysis of the market under the baseline focuses on Under-43-Percent-DTI conventional loans and GSE-eligible loans priced 2.25 percentage points or higher above APOR because the Bureau estimates most loans newly obtaining QM status due to the proposal fall within those categories. A smaller number of GSE-eligible loans would not fall within the revised General QM loan definition because they do not satisfy the consider and verify

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<sup>95</sup> Pub. L. 115-174, 132 Stat. 1296 (2018).

<sup>96</sup> The comparable thresholds are 6.5 percentage points over APOR for loans priced under \$66,156, 3.5 percentage points over APOR for loans priced under \$110,260 but at or above \$66,156, and 6.5 percentage points over APOR for loans for manufactured housing priced under \$110,260. 12 CFR 1026.43(e)(2)(vi)(A) through (D).

requirements in the revised General QM loan definition. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of GSE-eligible loans that do not satisfy the consider and verify requirements in the revised General QM loan definition. These loans are largely restricted to certain streamlined refinance loans offered by the GSEs, and the Bureau estimates that in the current market such loans are considerably less numerous than Under-43-Percent-DTI conventional loans and GSE-eligible loans priced 2.25 percentage points or higher above APOR.<sup>97</sup> However, demand for such loans could increase if housing market conditions deteriorate.

#### *D. Potential Benefits and Costs to Covered Persons and Consumers*

##### *1. Benefits to Consumers*

The primary benefit to consumers of the proposal is the availability of conventional QM loans priced 2.25 percentage points or higher above APOR—including both Under-43-Percent-DTI conventional loans and GSE-eligible loans—during the period from July 1, 2021 to October 1, 2022. Relative to the baseline, the Bureau estimates that between July 1, 2021 and October 1, 2022, approximately 33,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal due to the availability of the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition.<sup>98</sup> While many of these consumers may obtain mortgages of some kind

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<sup>97</sup> As of Q3 2020, only 105 loans had been originated through the GSEs' High-LTV Refinance Option since the inception of the program. See FHFA Foreclosure Prevention and Refinance Report (Q3 2020), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/3Q2020FPR.pdf>.

<sup>98</sup> This estimate assumes that the GSEs continue to originate loans priced 2.25 percentage points or higher above APOR between July 1, 2021 and October 1, 2022. If the GSEs do not originate loans above the General QM Final Rule's pricing thresholds during this period, the Bureau estimates that approximately 28,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal.

under the baseline, the largest benefits to consumers accrue to the consumers who would obtain a conventional QM loan under the proposal but would not obtain a mortgage under the baseline.

Under the baseline, some of these 33,000 consumers may be able to obtain General QM loans priced below 2.25 percentage points over APOR due to creditor responses to the General QM Final Rule or obtain QM loans under the Small Creditor QM definition. Others may instead obtain FHA loans, likely paying higher total loan costs as discussed in the General QM Final Rule. Finally, a portion of these consumers may obtain non-QM loans under the baseline, but the Bureau expects some consumers may not be able to obtain a mortgage at all.

The proposal would also benefit those consumers seeking GSE-eligible loans that do not satisfy the consider and verify requirements in the revised General QM loan definition. Such loans, including GSE streamlined refinance loans, may not be available to consumers under the baseline.

## *2. Benefits to Covered Persons*

The proposal's primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating QM loans priced 2.25 percentage points or higher above APOR, particularly Under-43-Percent-DTI conventional loans and GSE-eligible loans. For the estimated 33,000 additional conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal, the Bureau estimates an average loan size of \$190,000 and thus a total loan volume of \$6.3 billion. Under the baseline, after July 1, 2021, creditors would be unable to originate such loans under the General QM loan definition that was in effect prior to March 1, 2021 or the Temporary GSE QM loan definition and would instead have to originate such loans as FHA, Small Creditor QM, or non-QM loans, or originate at a price at or below 2.25 percentage points over APOR as General QM loans. Creditors' current preference for

originating QM loans priced 2.25 percentage points or more over APOR likely reflects advantages in a combination of costs or guarantee fees (particularly relative to FHA loans), liquidity (particularly relative to Small Creditor QM), or litigation and credit risk (particularly relative to non-QM). Moreover, QM loans are exempt from the Dodd-Frank Act risk retention requirement whereby creditors that securitize mortgage loans are required to retain at least 5 percent of the credit risk of the security, which adds significant cost. As a result, the proposal conveys benefits to mortgage creditors originating General QM and Temporary GSE QM loans on each of these dimensions.

Given creditors' preference for originating QM loans, the proposal may allow lenders to avoid price reductions on some loans that would be necessary to satisfy the revised General QM loan definition under the baseline. This would increase revenue for creditors on such loans originated during the July 1, 2021 to October 1, 2022 period.

### *3. Costs to Consumers*

For the duration of the July 1, 2021 to October 1, 2022 period, creditors who would have reduced prices on some loans to satisfy the revised General QM loan definition under the baseline may delay reducing loan prices under the proposal. This is likely to occur for some uncertain fraction of the estimated 33,000 additional conventional loans within the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition. Consumers obtaining such loans would pay higher prices for these conventional QM loans relative to the baseline.

In addition, consumers who would have obtained non-QM loans under the baseline but instead obtain QM loans under the proposal forgo the benefit of retaining the ATR causes of action and defenses against foreclosure.

#### *4. Costs to Covered Persons*

The proposal would involve minimal costs to covered persons. The most sizable potential costs to covered persons are effectively transfers between creditors for the duration of the mandatory compliance date delay, reflecting temporarily reduced loan origination volume for creditors who primarily originate FHA or Under-43-Percent-DTI non-QM loans and temporarily increased origination volume for lenders who primarily originate Under-43-Percent-DTI conventional loans priced 2.25 percentage points or more over APOR.

#### *5. Other Benefits and Costs*

In delaying the expiration of the General QM loan definition that was in effect prior to March 1, 2021, and the Temporary GSE QM loan definition, the proposal would delay any effects of the expiration on the development of the secondary market for private (non-GSE) mortgage loan securities. When the Temporary GSE QM loan definition expires, those loans that do not fit within the revised General QM loan definition represent a potential new market for private securitizations. Thus, the proposal would slightly reduce the scope of the potential non-QM market for the duration of the mandatory compliance date delay, likely lowering profits and revenues for participants in the private secondary market. This would effectively be a transfer from these private secondary market participants to participants in the agency secondary market.

#### *E. Potential Specific Impacts of the Proposed Rule*

##### *1. Potential Impact on Depository Institutions and Credit Unions With \$10 Billion or Less in Total Assets, as Described in Section 1026*

The proposal's expected impact on depository institutions and credit unions that are also creditors making covered loans (depository creditors) with \$10 billion or less in total assets is similar to the expected impact on larger creditors and non-depository creditors. Those smaller



creditors originating portfolio loans can originate Small Creditor QM loans priced 2.25 percentage points or higher above APOR, and thus may rely less on the General QM loan definition that was in effect prior to March 1, 2021 and the Temporary GSE QM loan definition for originating such loans. If the General QM mandatory compliance date would confer a competitive advantage to these small creditors in their origination of loans priced 2.25 percentage points or higher above APOR, the proposal would delay this outcome.

## 2. *Potential Impact of the Proposed Provisions on Consumers in Rural Areas*

The proposal's expected impact on consumers in rural areas is similar or slightly larger than the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that loans priced 2.25 percentage points or higher above APOR that are either Under-43-Percent-DTI conventional loans or GSE-eligible loans reflect a slightly larger share of the conventional loan market in rural areas (0.8 percent) relative to non-rural areas (0.6 percent).<sup>99</sup>

## **VI. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (RFA),<sup>100</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>101</sup> requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.<sup>102</sup>

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<sup>99</sup> These statistics are estimated based on originations from the first nine months of the year, to allow time for loans to be sold before HMDA reporting deadlines.

<sup>100</sup> 5 U.S.C. 601 *et seq.*

<sup>101</sup> Pub. L. 104-121, tit. II, 110 Stat. 857 (1996).

<sup>102</sup> 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.<sup>103</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.<sup>104</sup>

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau does not expect the final rule to impose costs on small entities relative to the baseline. Under the baseline, on July 1, 2021, the Temporary GSE QM loan definition and the General QM loan definition that was in effect prior to March 1, 2021 expire, and therefore no creditor—including small entities—would be able to originate QM loans under either definition after that date. Under the proposal, small entities that would otherwise not be able to originate QM loans under these definitions would be able to originate such loans with QM status until October 1, 2022. Thus, the Bureau anticipates that the proposal would only reduce burden on small entities relative to the baseline.

Accordingly, the Acting Director certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposal on small entities and requests any relevant data.

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<sup>103</sup> 5 U.S.C. 603 through 605.

<sup>104</sup> 5 U.S.C. 609.

## **VII. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>105</sup> Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The proposal would amend 12 CFR part 1026 (Regulation Z), which implements TILA. OMB control number 3170-0015 is the Bureau's OMB control number for Regulation Z. The Bureau has determined that this proposal does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under that OMB control number 3170-0015.

The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA.

### **List of Subjects**

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

### **Authority and Issuance**

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

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<sup>105</sup> 44 U.S.C. 3501 *et seq.*

**PART 1026—TRUTH IN LENDING (REGULATION Z)**

1. The authority citation for part 1026 continues to read as follows:

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

2. In supplement I to part 1026, under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*:

- a. Revise introductory paragraph 2;
- b. Under section *43(e)(2) Qualified mortgage defined—general*, add introductory paragraph 1; and
- c. Revise section *43(e)(4) Qualified mortgage defined—other agencies*.

The revisions and addition read as follows:

**Supplement I to Part 1026—Official Interpretations**

\* \* \* \* \*

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

\* \* \* \* \*

2. *General QM Amendments Effective on March 1, 2021.* The Bureau’s revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after March 1, 2021 (effective date). Compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after October 1, 2022 (mandatory compliance date). For a given transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: with 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as

it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the 2021 General QM Amendments. For transactions subject to § 1026.19(e), (f), or (g), creditors determine the date the creditor received the consumer's application, for purposes of this comment, 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 this comment, in accordance with either § 1026.2(a)(3)(i) or (ii).

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*43(e)(2) Qualified mortgage defined—general.*

1. *General QM Amendments Effective on March 1, 2021.* Comment 43-2 provides that, for a transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: with 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments). Prior to the effective date of the 2021 General QM Amendments, § 1026.43(e)(2) provided a qualified mortgage definition that, among other things, required that the ratio of the consumer's total monthly debt to total monthly income at the time of consummation not exceed 43 percent. The 2021 General QM Amendments removed that requirement and replaced it with the annual percentage rate thresholds in § 1026.43(e)(2)(vi), among other revisions. Both the qualified mortgage definition in § 1026.43(e)(2) that was in effect prior to the 2021 General QM Amendments and the qualified mortgage definition in

§ 1026.43(e)(2) as amended by the 2021 General QM Amendments are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. *See* comment 43-2 for an explanation of how creditors determine the date the creditor received the consumer’s application for purposes of that comment.

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

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.

2. *Mortgages for which the creditor received the consumer’s application prior to October 1, 2022.* Covered transactions that met the requirements of § 1026.43(e)(2)(i) through (iii), 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 for which the creditor received the consumer’s application prior to the mandatory compliance date of October 1, 2022 continue to be qualified mortgages for the purposes of this section, including those covered transactions that were consummated on or after October 1, 2022.

3. *Mortgages for which the creditor received the consumer's application on or after March 1, 2021 and prior to October 1, 2022.* For a discussion of the optional early compliance period for the 2021 General QM Amendments, please see comment 43-2.

4. [Reserved].

5. [Reserved].

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Dated: March 2, 2021.

/s/ David Uejio

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**David Uejio,**

*Acting Director, Bureau of Consumer Financial Protection.*