

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**[Docket No. CFPB-2020-0021]**

**RIN 3170-AA98**

**Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Extension of Sunset Date**

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

**ACTION:** Final rule; official interpretation.

**SUMMARY:** With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer’s ability to repay any residential mortgage loan, and loans that meet Regulation Z’s requirements for “qualified mortgages” (QMs) obtain certain protections from liability. One category of QMs consists of loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, government-sponsored enterprises, or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The GSEs are currently under Federal conservatorship. In 2013, the Bureau of Consumer Financial Protection (Bureau) established this category of QMs (Temporary GSE QM loans) as a temporary measure that would expire with respect to each GSE on the date that GSE exits conservatorship, or on January 10, 2021, whichever comes first. In this final rule, the Bureau amends 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. This final rule does not amend the provision stating that the Temporary GSE QM loan definition expires with respect to a GSE when that GSE exits conservatorship.

**DATES:** This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ben Cady, Counsel; or David Friend 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 Final 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 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 loan category. General QM loans must comply with the ATR/QM Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. For General QM loans, the ratio of the consumer's total monthly debt to total monthly income (DTI ratio) must not exceed 43 percent. Creditors must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the standards contained in appendix Q of Regulation Z.

A second, temporary category of QM loans defined in the ATR/QM Rule consists of mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QM loans and (2) are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac while under the conservatorship of the FHFA. This final 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. Unlike for General QM loans, the ATR/QM Rule does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the consumer’s DTI ratio exceeds 43 percent, as long as the loan is eligible to be purchased or guaranteed by either of the GSEs. In addition, for Temporary GSE QM loans, the ATR/QM Rule does not require creditors to use appendix Q to determine the consumer’s income, debt, or DTI ratio.

In 2013, the Bureau provided in the ATR/QM Rule that the Temporary GSE QM loan definition would expire with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first. The GSEs are currently in conservatorship. Despite the Bureau’s expectations when the ATR/QM Rule was published in 2013, Temporary GSE QM loan originations continue to represent a large and persistent share of the residential mortgage loan market. A significant number of Temporary GSE QM loans would be affected by the expiration of the Temporary GSE QM loan definition, including loans for which the consumer’s DTI ratio is above 43 percent or the creditor’s method of documenting and verifying income or debt is incompatible with appendix Q. Based on 2018 data, the Bureau estimates that, as a result of the General QM loan definition’s 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—would be affected by the expiration of the Temporary GSE QM loan definition. These loans are currently

originated as QM loans due to the Temporary GSE QM loan definition but would not be originated under the current General QM loan definition, and might not be originated at all, if the Temporary GSE QM loan definition were to expire.

On June 22, 2020, the Bureau issued two proposed rules concerning the ATR/QM Rule. In one of the proposals—referred to in this final rule as the Extension Proposal—the Bureau proposed to extend the Temporary GSE QM loan definition until the effective date of a final rule issued by the Bureau amending the General QM loan definition.<sup>1</sup> In the other proposal—referred to in this final rule as the General QM Proposal—the Bureau proposed amendments to the General QM loan definition.<sup>2</sup> In the General QM Proposal, the Bureau proposed, among other things, to remove the General QM loan definition’s DTI limit and replace it with a limit based on the loan’s pricing. The Bureau stated that it expected such amendments would allow most loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires. Based on 2018 data, the Bureau estimated in the General QM Proposal that 943,000 High-DTI conventional loans would fall outside the QM definitions if there are no changes to the General QM loan definition prior to the expiration of the Temporary GSE QM loan definition but would fall within the General QM loan definition if it were amended as the Bureau proposed. The Bureau stated that, as a result, the General QM Proposal would help to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition.

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<sup>1</sup> 85 FR 41448 (July 10, 2020).

<sup>2</sup> 85 FR 41716 (July 10, 2020).

On August 18, 2020, the Bureau issued a third proposal concerning the ATR/QM Rule. In that proposal—referred to in this final rule as the Seasoned QM Proposal—the Bureau proposed to create a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that meet certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.<sup>3</sup>

In this final rule, the Bureau amends 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. This final rule does not amend the provision stating that the Temporary GSE QM loan definition expires with respect to a GSE when that GSE exits conservatorship (the conservatorship clause). This final rule does not affect the QM definitions that apply to Federal Housing Administration (FHA), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS) loans. The Bureau concludes that this extension of the Temporary GSE QM loan definition’s sunset date will ensure that responsible, affordable mortgage credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before the amendments to the General QM loan definition take effect.

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<sup>3</sup> 85 FR 53568 (Aug. 28, 2020).

## **II. Background**

### *A. Dodd-Frank Act Amendments to the Truth in Lending Act*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>4</sup> amended the Truth in Lending Act (TILA)<sup>5</sup> to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.<sup>6</sup> The amendments were intended “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>7</sup> As amended, 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>8</sup>

TILA 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, debt-to-income 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 the

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<sup>4</sup> Public Law 111-203, 124 Stat. 1376 (2010).

<sup>5</sup> 15 U.S.C. 1601 *et seq.*

<sup>6</sup> Dodd-Frank Act sections 1411-12, 1414, 124 Stat. 2142-48, 2149; 15 U.S.C. 1639c.

<sup>7</sup> 15 U.S.C. 1639b(a)(2).

<sup>8</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).

repayment of the loan.<sup>9</sup> A creditor, however, may not be certain whether its ability-to-repay determination is reasonable in a particular case, and it risks liability if a court or an agency, including the Bureau, later concludes that the ability-to-repay determination was not reasonable.

TILA addresses this uncertainty by defining a category of loans—called QMs—for which a creditor “may presume that the loan has met” the ATR requirements.<sup>10</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>11</sup>

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<sup>9</sup> 15 U.S.C. 1639c(a)(3).

<sup>10</sup> 15 U.S.C. 1639c(b)(1).

<sup>11</sup> 15 U.S.C. 1639c(b)(2)(A).

## *B. The ATR/QM Rule*

In January 2013, the Bureau issued the ATR/QM Rule, which amended Regulation Z to implement TILA’s ATR requirements (January 2013 Final Rule).<sup>12</sup> The ATR/QM Rule became effective on January 10, 2014, and the Bureau amended it several times through 2016.<sup>13</sup> The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QM loans.<sup>14</sup> Under the ATR/QM Rule, a creditor that makes a QM loan is protected from liability presumptively or conclusively, depending on whether the loan is “higher priced.”<sup>15</sup>

### *1. General QM Loans*

One category of QM loans defined by the ATR/QM Rule consists of General QM loans. A loan is a General QM loan 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>16</sup>

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<sup>12</sup> 78 FR 6408 (Jan. 30, 2013).

<sup>13</sup> 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).

<sup>14</sup> 12 CFR 1026.43(c), (e).

<sup>15</sup> The ATR/QM Rule generally defines a “higher-priced” covered transaction for General QM loans and for Temporary GSE QM loans to mean a first-lien mortgage with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points; or a subordinate-lien transaction with an APR that exceeds APOR for a comparable transaction as of the date the interest rate is set by 3.5 or more percentage points. 12 CFR 1026.43(b)(4). A creditor that makes a QM loan that is not “higher priced” is entitled to a conclusive presumption that it has complied with the ATR/QM Rule—*i.e.*, the creditor receives a safe harbor. 12 CFR 1026.43(e)(1)(i). A creditor that makes a QM loan that is “higher priced” is entitled to a rebuttable presumption that it has complied with the ATR/QM Rule. 12 CFR 1026.43(e)(1)(ii).

<sup>16</sup> 12 CFR 1026.43(e)(2)(i) through (iii).

- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years;<sup>17</sup>
- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q;<sup>18</sup> and
- The consumer's DTI ratio is no more than 43 percent, determined in accordance with appendix Q.<sup>19</sup>

Appendix Q contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. The standards in appendix Q were adapted from guidelines maintained by FHA when the January 2013 Final Rule was issued.<sup>20</sup> Appendix Q addresses how to determine a consumer's employment-related income (*e.g.*, income from wages, commissions, and retirement plans); non-employment related income (*e.g.*, income from alimony and child support payments, investments, and property rentals); and liabilities, including recurring and contingent liabilities and projected obligations.<sup>21</sup>

## 2. *Temporary GSE QM Loans*

A second, temporary category of QM loans defined by the ATR/QM Rule, Temporary GSE QM loans, consists of mortgages that (1) comply with the ATR/QM Rule's prohibitions on

<sup>17</sup> 12 CFR 1026.43(e)(2)(iv).

<sup>18</sup> 12 CFR 1026.43(e)(2)(v).

<sup>19</sup> 12 CFR 1026.43(e)(2)(vi).

<sup>20</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>21</sup> 12 CFR 1026, appendix Q.

certain loan features and its limitations on points and fees<sup>22</sup> and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of the FHFA.<sup>23</sup> Unlike for General QM loans, Regulation Z does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the DTI ratio exceeds 43 percent, as long as the DTI ratio meets the applicable GSE's DTI requirements and other underwriting criteria. In addition, income, debt, and DTI ratios for such loans generally are verified and calculated using GSE standards, rather than appendix Q. The January 2013 Final Rule provided that the Temporary GSE QM loan definition—also known as the GSE Patch—would expire with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first.<sup>24</sup>

#### *C. The Bureau's Assessment of the ATR/QM Rule*

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>25</sup> The Bureau noted in the January 2013 Final Rule that its section 1022(d) assessment of the ATR/QM Rule would provide an opportunity to analyze the Temporary GSE QM loan definition and confirm, prior to its expiration, whether it would be

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<sup>22</sup> 12 CFR 1026.43(e)(2)(i) through (iii).

<sup>23</sup> 12 CFR 1026.43(e)(4).

<sup>24</sup> 12 CFR 1026.43(e)(4)(iii)(B). The ATR/QM Rule created several additional categories of QM loans. The ATR/QM Rule provided that mortgages eligible to be insured or guaranteed (as applicable) by HUD, VA, USDA, and RHS were QMs. 12 CFR 1026.43(e)(4)(ii)(B) through (E). The ATR/QM Rule stated that these provisions would expire on the effective date of rules issued by each of these agencies pursuant to their authority under TILA to define a QM. 12 CFR 1026.43(e)(4)(iii)(A). Because each of these agencies has issued such a rule, these provisions have expired. *See, e.g.*, 24 CFR 203.19 (HUD rule). Other categories of QM loans 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 April 1, 2016).

<sup>25</sup> 12 U.S.C. 5512(d).

appropriate to allow it to expire.<sup>26</sup> The Bureau published its report as a result of its assessment on January 11, 2019 (Assessment Report).<sup>27</sup>

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

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. In recent months, there has been 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, origination activity outside the government and GSE-backed origination channels has declined significantly, 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 tensions and uncertainty rose in mid-March 2020, and investors moved rapidly towards cash and government securities.<sup>28</sup> The lack of investor demand to purchase mortgages, combined with a large supply of agency mortgage-

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<sup>26</sup> 78 FR 6408, 6533-34 (Jan. 30, 2013).

<sup>27</sup> Bureau of Consumer Fin. Prot., *Ability-to-Repay and Qualified Mortgage Rule Assessment Report* (Jan. 2019), 2019) (Assessment Report), [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).

<sup>28</sup> *The Quarterly CARES Act Report to Congress: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 116th Cong. 2-3 (2020) (statement of Jerome H. Powell, Chairman, Board of Governors of the Federal Reserve System).

backed securities (MBS) entering the market,<sup>29</sup> resulted in widening spreads between the rates on a 10-year Treasury note and mortgage interest rates.<sup>30</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 Federal Reserve Board of Governors (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>31</sup> market conditions have improved substantially.<sup>32</sup> This has helped to tighten interest rate spreads, which stabilizes mortgage rates, resulting in a decline in mortgage rates since the Board’s intervention and in a significant increase in refinance activity.

However, non-agency MBS<sup>33</sup> are generally perceived by investors as riskier than agency MBS. As a result, private capital has remained tight and non-agency mortgage credit, including non-QM lending, has declined. 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

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<sup>29</sup> Agency MBS are backed by loans guaranteed by Fannie Mae, Freddie Mac, and the Government National Mortgage Association (Ginnie Mae).

<sup>30</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>.

<sup>31</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/newsreleases/monetary20200323b.htm>.

<sup>32</sup> *The Quarterly CARES Act Report to Congress: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 116th Cong. 3 (2020) (statement of Jerome H. Powell, Chairman, Board of Governors of the Federal Reserve System).

<sup>33</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.

COVID-19 pandemic began to affect the economy significantly.<sup>34</sup> Nearly all major non-QM creditors ceased making loans in March and April 2020. Beginning in May 2020, issuers of non-agency MBS began to test the market with deals collateralized by non-QM loans largely originated prior to the pandemic, and investor demand for these securitizations has begun to recover. However, no securitization has been completed that is predominantly collateralized by non-QM loans originated since the pandemic began.<sup>35</sup> As a result, many non-QM creditors—which largely depend on the ability to sell loans in the secondary market in order to fund new loans—have begun to resume originations, albeit with a tighter credit box.<sup>36</sup> Prime jumbo financing dropped nearly 22 percent in the first quarter of 2020. Banks increased interest rates and narrowed the product offerings such that only consumers with pristine credit profiles were eligible, as these loans must be held in portfolio when the secondary market for non-agency MBS contracts.<sup>37</sup>

The GSEs and government agencies continue to play a dominant role in the market recovery, with the GSE share of first-lien mortgage originations at 65.2 percent in the second quarter of 2020, up from 42.1 percent in the second quarter of 2019 and the FHA and VA share growing to 21.1 percent from 17.7 percent a year prior, according to an analysis by the Urban Institute. Portfolio lending declined to 12.7 percent in the second quarter of 2020, down from

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<sup>34</sup> Brandon Ivey, *Non-Agency MBS Issuance Slowed in First Quarter* (Apr. 3, 2020), <https://www.insidemortgagefinance.com/articles/217623-non-agency-mbs-issuance-slowed-in-first-quarter>.

<sup>35</sup> Brandon Ivey, *Non-Agency MBS Issuance Slow in Mid-August* (Aug. 21, 2020), <https://www.insidemortgagefinance.com/articles/218973-non-agency-mbs-issuance-slow-in-mid-august>.

<sup>36</sup> Brandon Ivey, *Non-Agency Mortgage Securitization Opening Up After Pause* (May 14, 2020), <https://www.insidemortgagefinance.com/articles/218034-non-agency-mortgage-securitization-opening-up-after-pause>.

<sup>37</sup> Brandon Ivey, *Jumbo Originations Drop Nearly 22% in First Quarter* (May 15, 2020) <https://www.insidemortgagefinance.com/articles/218028-jumbo-originations-drop-nearly-22-in-first-quarter>.

38.6 percent in the second quarter of 2019, and private label securitizations declined to 1 percent from 1.6 percent a year prior.<sup>38</sup>

## *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>39</sup> in March 2020. The CARES Act provides additional protections for borrowers whose mortgages are purchased or securitized by a GSE and certain federally backed mortgages. The CARES Act mandated a 60-day foreclosure moratorium for such mortgages, which has since been extended by the agencies until the end of the year.<sup>40</sup> The CARES Act also allows 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.

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<sup>38</sup> Laurie Goodman *et al.*, Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Aug. 27, 2020), <https://www.urban.org/sites/default/files/publication/102776/august-chartbook-2020.pdf>.

<sup>39</sup> Public Law 116-136, 134 Stat. 281 (2020) (includes loans backed by HUD, USDA, VA, Fannie Mae, and Freddie Mac).

<sup>40</sup> See, e.g., Fed. Hous. Fin. Agency, *FHFA Extends Foreclosure and REO Eviction Moratoriums* (Aug. 27, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums.aspx>; Press Release, U.S. Dep't of Hous. & Urban Dev., *FHA Extends Foreclosure And Eviction Moratorium For Homeowners Through Year End* (Aug. 27, 2020), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_20\\_134](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_134); Veterans Benefits Admin., *Extended Foreclosure Moratorium for Borrowers Affected by COVID-19* (Aug. 24, 2020), <https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-20-30.pdf>; Rural Dev., U.S. Dep't of Agric., *Extension of Foreclosure and Eviction Moratorium for Single Family Housing Direct Loans* (Aug. 28, 2020), <https://content.govdelivery.com/accounts/USDARD/bulletins/29c3a9e>.

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>41</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, significantly higher-than-expected forbearance rates over an extended period of time may lead to liquidity shortages, particularly among many non-bank servicers. According to a weekly survey from the Mortgage Bankers Association, while forbearance rates remain elevated at 6.32 percent for the week ending October 4, 2020, they have decreased since reaching their high of 8.55 percent on June 7, 2020.<sup>42</sup>

Because many mortgage servicers also originate the loans they service, many creditors, as well as several warehouse providers,<sup>43</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 include more stringent requirements for non-QM, jumbo, and government loans.<sup>44</sup> The GSEs also imposed an

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<sup>41</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>42</sup> Press Release, Mortg. Bankers Ass’n, *Share of Mortgage Loans in Forbearance Declines to 6.32%* (Oct. 12, 2020), <https://www.mba.org/2020-press-releases/october/share-of-mortgage-loans-in-forbearance-declines-to-632>.

<sup>43</sup> Warehouse providers are creditors that provide financing to mortgage originators and servicers to fund and service loans.

<sup>44</sup> Maria Volkova, *FHA/VA Lenders Raise Credit Score Requirements* (Apr. 3, 2020), <https://www.insidemortgagefinance.com/articles/217636-fava-lenders-raise-fico-credit-score-requirements>.

“adverse market fee” of 50 basis points on most refinances, 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>45</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>46</sup> concerns over non-bank liquidity and related credit overlays have begun to ease.<sup>47</sup> While the non-QM market has begun to recover, it is unclear how quickly non-banks who originate non-QM loans will fully return to their pre-pandemic level of operations and loan production.

### **III. Summary of the Rulemaking Process**

The Bureau has solicited and received substantial public and stakeholder input on issues related to the substance of this final rule. In addition to the Bureau’s discussions with and communications from industry stakeholders, consumer advocates, other Federal agencies,<sup>48</sup> and members of Congress, the Bureau issued requests for information (RFIs) in 2017 and 2018 and

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<sup>45</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>46</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. *All Participant Memorandum (APM) 20-03*, [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 approves private market servicer liquidity facility*, <https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=194>.

<sup>47</sup> Brandon Ivey, *Non-QM Lenders Regaining Footing* (July 24, 2020), <https://www.insidemortgagefinance.com/articles/218696-non-qm-lenders-regaining-footing-with-a-positive-outlook> (on file).

<sup>48</sup> The Bureau has consulted with agencies including the FHFA, the Board, FHA, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Trade Commission, the National Credit Union Administration, and the Department of the Treasury.

in July 2019 issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The Bureau issued the Extension Proposal and the General QM Proposal on June 22, 2020 and the Seasoned QM Proposal on August 18, 2020.

#### *A. The Requests for Information*

In June 2017, the Bureau published an RFI in connection with the Assessment Report (Assessment RFI).<sup>49</sup> In response to the Assessment RFI, the Bureau received approximately 480 comments from creditors, industry groups, consumer advocacy groups, and individuals.<sup>50</sup> The comments addressed a variety of topics, including the General QM loan definition and the 43 percent DTI limit; perceived problems with, and potential changes and alternatives to, appendix Q; and how the Bureau should address the expiration of the Temporary GSE QM loan definition. The comments expressed a range of ideas for addressing the expiration of the Temporary GSE QM loan definition. Some commenters recommended making the definition permanent or extending it for various periods of time. Other comments stated that the Temporary GSE QM loan definition should be eliminated or permitted to expire.

Beginning in January 2018, the Bureau issued a general call for evidence seeking comment on its enforcement, supervision, rulemaking, market monitoring, and financial education activities.<sup>51</sup> As part of the call for evidence, the Bureau published requests for information relating to, among other things, the Bureau’s rulemaking process,<sup>52</sup> the Bureau’s

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<sup>49</sup> 82 FR 25246 (June 1, 2017).

<sup>50</sup> See Assessment Report, *supra* note 27, at appendix B (summarizing comments received in response to the Assessment RFI).

<sup>51</sup> See Bureau of Consumer Fin. Prot., *Call for Evidence*, <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence> (last updated Apr. 17, 2018).

<sup>52</sup> 83 FR 10437 (Mar. 9, 2018).

adopted regulations and new rulemaking authorities,<sup>53</sup> and the Bureau’s inherited regulations and inherited rulemaking authorities.<sup>54</sup> In response to the call for evidence, the Bureau received comments on the ATR/QM Rule from stakeholders, including consumer advocacy groups and industry groups. The comments addressed a variety of topics, including the General QM loan definition, appendix Q, and the Temporary GSE QM loan definition. The comments also raised concerns about, among other things, the risks of allowing the Temporary GSE QM loan definition to expire without any changes to the General QM loan definition or appendix Q. The concerns raised in these comments were similar to those raised in response to the Assessment RFI, discussed above.

#### *B. The ANPR*

On July 25, 2019, the Bureau issued the ANPR.<sup>55</sup> 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, if necessary, to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. 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, including whether and how the Bureau should revise the DTI limit in the General QM loan definition; whether the Bureau should supplement or replace the DTI limit with another method for directly measuring a

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<sup>53</sup> 83 FR 12286 (Mar. 21, 2018).

<sup>54</sup> 83 FR 12881 (Mar. 26, 2018).

<sup>55</sup> 84 FR 37155 (July 31, 2019).

consumer's personal finances; whether the Bureau should revise appendix Q or replace it with other standards for calculating and verifying a consumer's debt and income; and whether, instead of a DTI limit, the Bureau should adopt standards that do not directly measure a consumer's personal finances.<sup>56</sup> The Bureau requested comment on how much time industry would need to change its practices in response to any revisions the Bureau makes to the General QM loan definition.<sup>57</sup> The Bureau received 85 comments on the ANPR from businesses in the mortgage industry (including creditors), consumer advocacy groups, elected officials, individuals, and research centers.

### *C. The Extension Proposal, General QM Proposal, and Seasoned QM Proposal*

The Bureau issued the Extension Proposal and the General QM Proposal on June 22, 2020. In the Extension Proposal, the Bureau proposed to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision that extends the Temporary GSE QM loan definition until the effective date of final amendments to the General QM loan definition in Regulation Z (*i.e.*, a final rule relating to the General QM Proposal). The Bureau did not propose to amend the conservatorship clause. The comment period for the Extension Proposal ended on August 10, 2020.

In the General QM Proposal, the Bureau proposed, among other things, to remove the General QM loan definition's DTI limit and replace it with a limit based on the loan's pricing. Under the proposal, a loan would meet the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of

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<sup>56</sup> *Id.* at 37155, 37160-62.

<sup>57</sup> *Id.* at 37162. The Bureau stated that if the answer to this question depends on how the Bureau revises the definition, the Bureau requested answers based on alternative possible definitions.

the date the interest rate is set. The Bureau proposed higher thresholds for loans with smaller loan amounts and subordinate-lien transactions. The Bureau also proposed to retain the existing product-feature and underwriting requirements and limits on points and fees. Although the Bureau proposed to remove the 43 percent DTI limit from the General QM loan definition, the General QM Proposal would require that the creditor consider and verify the consumer's income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income. The Bureau proposed to remove appendix Q. To mitigate the uncertainty that may result from appendix Q's removal, the General QM Proposal would clarify the requirements to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. The Bureau proposed to preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

Although the Bureau proposed to remove the 43 percent DTI limit and adopt a price-based approach for the General QM loan definition, the Bureau also requested comment on two alternative approaches: (1) retaining the DTI limit and increasing it to a specific threshold between 45 percent and 48 percent or (2) using a hybrid approach involving both pricing and a DTI limit, such as applying a DTI limit to loans that are above specified rate spreads. Under these alternative approaches, creditors would not be required to verify debt and income using appendix Q.

The Bureau stated in the General QM Proposal that it expected such amendments would allow most loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the

Temporary GSE QM loan definition expires.<sup>58</sup> The Bureau stated that, as a result, the General QM Proposal would help to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. The Bureau proposed that the effective date of a final rule relating to the General QM Proposal would be six months after publication of the final rule in the *Federal Register*. The revised regulations would apply to covered transactions for which creditors receive an application on or after this effective date. The comment period for the General QM Proposal ended on September 8, 2020.

On August 18, 2020, the Bureau issued the Seasoned QM Proposal. The Bureau proposed to create a new category of QMs for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.<sup>59</sup> The Bureau stated that the primary objective of the Seasoned QM Proposal was to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions. The Bureau proposed that a final rule relating to the Seasoned QM Proposal would take effect on the same date as a final rule relating to the General QM Proposal. Under the Seasoned QM Proposal—as under the General QM Proposal—the revised regulations would apply to covered transactions for which creditors receive an application on or after this effective date. Thus, due to the 36-month seasoning period, no loan would be eligible to become a Seasoned QM until at least 36 months

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<sup>58</sup> Based on 2018 data, the Bureau estimated in the General QM Proposal that 943,000 High-DTI conventional loans would fall outside the QM definitions if there are no changes to the General QM loan definition prior to the expiration of the Temporary GSE QM loan definition but would fall within the General QM loan definition if amended as the Bureau proposed.

<sup>59</sup> 85 FR 53568 (Aug. 28, 2020).

after the effective date of a final rule relating to the Seasoned QM Proposal. The comment period for the Seasoned QM Proposal was extended to October 1, 2020.<sup>60</sup>

#### **IV. Legal Authority**

The Bureau is issuing this final rule 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>61</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>62</sup>

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>63</sup> A purpose of TILA is “to assure a meaningful disclosure of credit terms

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<sup>60</sup> 85 FR 60096 (Sept. 24, 2020).

<sup>61</sup> 12 U.S.C. 5581(a)(1)(A).

<sup>62</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>63</sup> 15 U.S.C. 1604(a).

so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.”<sup>64</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>65</sup> As discussed in the section-by-section analysis below, the Bureau is issuing certain provisions of this final rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

Section 129C(b)(3)(B)(i) of TILA 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>66</sup> In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of section 129C.<sup>67</sup> As discussed in the section-by-section analysis below, the Bureau is issuing certain provisions of this final rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

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>68</sup> TILA and title X of the Dodd-Frank

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<sup>64</sup> 15 U.S.C. 1601(a).

<sup>65</sup> 15 U.S.C. 1639b(a)(2).

<sup>66</sup> 15 U.S.C. 1639c(b)(3)(B)(i).

<sup>67</sup> 15 U.S.C. 1639c(b)(3)(A).

<sup>68</sup> 12 U.S.C. 5512(b)(1).

Act are Federal consumer financial laws. Accordingly, in this final rule, the Bureau is exercising 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.

## **V. Why the Bureau Is Issuing this Final Rule**

This final rule replaces the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision that extends the Temporary GSE QM loan definition until the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z.<sup>69</sup> The Bureau is issuing this final rule because it is concerned about the likely effects on the availability and cost of credit if the Temporary GSE QM loan definition were to expire before final amendments to the General QM loan definition take effect.<sup>70</sup> The Bureau proposed amendments to the General QM loan definition in the General QM Proposal, which the Bureau issued on June 22, 2020.<sup>71</sup>

As explained above, the General QM Proposal would remove the General QM loan definition's 43 percent DTI limit and replace it with a price-based approach. Specifically, the General QM Proposal provides that a loan meets the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds the APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set.<sup>72</sup> The Bureau expects that the

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<sup>69</sup> This final rule does not amend the conservatorship clause in § 1026.43(e)(4)(ii)(A), which provides that the Temporary GSE QM loan definition will expire with respect to each GSE when that GSE exits conservatorship.

<sup>70</sup> As described in the section-by-section analysis below, the mandatory compliance date for a final rule amending the General QM loan definition either would be the same as the effective date of such a final rule or would occur after the effective date of such a final rule. So, under this final rule, the Temporary GSE QM loan definition would cease to be available no earlier than the effective date of a final rule amending the General QM loan definition.

<sup>71</sup> 85 FR 41448 (July 10, 2020).

<sup>72</sup> The General QM Proposal would also provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions.

amendments the Bureau proposed in the General QM Proposal would, among other things, allow most loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires.

However, the Bureau believes that some consumers who would have obtained loans under the Temporary GSE QM loan definition—and who would be able to obtain loans under the revised General QM loan definition, as separately proposed in the General QM Proposal—would not be able to obtain loans at all if the Temporary GSE QM loan definition expired before final amendments to the General QM loan definition have gone into effect. Further, for loans absorbed by FHA and the private market in the absence of the Temporary GSE QM loan definition, there is a significant risk that some consumers would have paid more for these loans. Any such pricing effects, however, would depend on the characteristics of the particular loans that would be originated as FHA loans or in the private market.

To prevent these likely effects on the availability and cost of credit if the Temporary GSE QM loan definition were to expire before final amendments to the General QM loan definition take effect, the Bureau is revising the ATR/QM Rule to provide that the Temporary GSE QM loan definition will expire on the mandatory compliance date of a final rule issued by the Bureau amending the General QM loan definition or when the GSEs exit conservatorship, whichever comes first. The Bureau concludes that this extension of the Temporary GSE QM loan definition's sunset date will ensure that responsible, affordable credit remains available to consumers who may have been affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition take effect.

Consistent with the Extension Proposal, and for the reasons discussed below in the section-by-section analysis of § 1026.43(e)(4)(iii)(B), the Bureau is not amending the conservatorship clause in § 1026.43(e)(4)(ii)(A).

*A. Why the Bureau Created the Temporary GSE QM Loan Definition*

In the January 2013 Final Rule, the Bureau explained why it created the Temporary GSE QM loan definition. The Bureau observed that it did not believe that a 43 percent DTI ratio “represents the outer boundary of responsible lending” and acknowledged that historically, and even after the financial crisis, over 20 percent of mortgages exceeded that threshold.<sup>73</sup> However, the Bureau stated that, as DTI ratios increase, “the general ability-to-repay procedures, rather than the qualified mortgage framework, is better suited for consideration of all relevant factors that go to a consumer’s ability to repay a mortgage loan” and that “[o]ver the long term . . . there will be a robust and sizable market for prudent loans beyond the 43 percent threshold even without the benefit of the presumption of compliance that applies to qualified mortgages.”<sup>74</sup>

At the same time, the Bureau noted that the mortgage market was especially fragile following the financial crisis and that GSE-eligible loans and federally insured or guaranteed loans made up a significant majority of the market.<sup>75</sup> The Bureau believed that it was appropriate to consider for a period of time that GSE-eligible loans were originated with an appropriate assessment of the consumer’s ability to repay and therefore warranted being treated as QMs.<sup>76</sup> The Bureau believed in 2013 that this temporary category of QM loans would, in the

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<sup>73</sup> 78 FR 6408, 6527 (Jan. 30, 2013).

<sup>74</sup> *Id.* at 6527-28.

<sup>75</sup> *Id.* at 6533-34.

<sup>76</sup> *Id.* at 6534.

near term, help to ensure access to responsible, affordable credit for consumers with DTI ratios above 43 percent, as well as facilitate compliance by creditors by promoting the use of widely recognized, federally related underwriting standards.<sup>77</sup>

The January 2013 Final Rule established a sunset date for the Temporary GSE QM loan definition of January 10, 2021 (seven years after that rule's effective date). The January 2013 Final Rule also stated that the Temporary GSE QM loan definition expires with respect to a GSE when that GSE exits conservatorship, even if that occurs before January 10, 2021.<sup>78</sup> The Bureau stated that it believed a seven-year period between the January 2013 Final Rule's effective date and the Temporary GSE QM loan definition's sunset date would "provide an adequate period for economic, market, and regulatory conditions to stabilize" and "a reasonable transition period to the general qualified mortgage definition."<sup>79</sup> The Bureau believed that the Temporary GSE QM loan definition would benefit consumers by preserving access to credit while the mortgage industry adjusted to the ATR/QM Rule.<sup>80</sup> The Bureau also explained that it structured the Temporary GSE QM loan definition to cover loans eligible to be purchased or guaranteed by either of the GSEs—regardless of whether the loans are actually purchased or guaranteed—to leave room for non-GSE private investors to return to the market and secure the same legal protections as the GSEs.<sup>81</sup>

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<sup>77</sup> *Id.* at 6533.

<sup>78</sup> See 12 CFR 1026.43(e)(4)(ii)(A)(I) and (iii)(B).

<sup>79</sup> 78 FR 6408, 6534 (Jan. 30, 2013).

<sup>80</sup> *Id.* at 6536.

<sup>81</sup> *Id.* at 6534.

The Bureau believed that, as the market recovered, the GSEs and the Federal agencies would be able to reduce their market presence, the percentage of Temporary GSE QM loans would decrease, and the market would shift toward General QM loans and non-QM loans above a 43 percent DTI ratio.<sup>82</sup> The Bureau’s view was that a shift towards non-QM loans could be supported by the non-GSE private market—*i.e.*, by institutions holding such loans in portfolio, selling them in whole, or securitizing them in a rejuvenated private-label securities (PLS) market. The Bureau noted that pursuant to its statutory obligations under the Dodd-Frank Act, it would assess the impact of the ATR/QM Rule five years after the ATR/QM Rule’s effective date, and the assessment would provide an opportunity to analyze the Temporary GSE QM loan definition.<sup>83</sup>

#### *B. The Continued Prevalence of Temporary GSE QM Loan Originations*

The mortgage market has evolved differently than the Bureau predicted when it issued the January 2013 Final Rule. Contrary to the Bureau’s expectations in 2013, the market has not shifted away from Temporary GSE QM originations and the private market<sup>84</sup> remains small. As noted in the Assessment Report, Temporary GSE QM originations continue to represent “a large and persistent” share of originations in the conforming segment of the mortgage market, and a robust and sizable market to support non-QM lending has not emerged.<sup>85</sup>

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Consistent with the Assessment Report, references to the private market herein include loans securitized by PLS and loans financed by portfolio lending by commercial banks, credit unions, savings banks, savings associations, mortgage banks, life insurance companies, finance companies, their affiliate institutions, and other private purchasers. *See* Assessment Report, *supra* note 27, at 74.

<sup>85</sup> *Id.* at 198.

The GSEs' share of the conventional, conforming purchase-mortgage market was large before the ATR/QM Rule, and the Assessment Report found a small increase in that share since the ATR/QM Rule's effective date, reaching 71 percent in 2017.<sup>86</sup> The Assessment Report noted that, at least for loans intended for sale in the secondary market, creditors generally offer a Temporary GSE QM loan even when a General QM loan could be originated.<sup>87</sup>

As explained in the Extension Proposal, the continued prevalence of Temporary GSE QM loan originations is contrary to the Bureau's expectation at the time it issued the January 2013 Final Rule.<sup>88</sup> The Assessment Report discussed several possible reasons for the continued prevalence of Temporary GSE QM loan originations. The Assessment Report first highlighted concerns that Assessment RFI commenters expressed about the perceived lack of clarity in appendix Q. The Assessment Report found that such concerns "may have contributed to investors"—and at least derivatively, creditors'—preference" for Temporary GSE QM loans instead of originating loans under the General QM loan definition.<sup>89</sup> The Assessment Report noted that a second possible reason for the continued prevalence of Temporary GSE QM loans is that the GSEs were able to accommodate demand for mortgages above the General QM loan definition's DTI limit of 43 percent as the DTI ratio distribution in the market shifted upward.<sup>90</sup> The Assessment Report found that a third possible reason for the persistence of Temporary GSE

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<sup>86</sup> *Id.* at 191.

<sup>87</sup> *Id.* at 192.

<sup>88</sup> *Id.* at 13, 190, 238.

<sup>89</sup> *Id.* at 193.

<sup>90</sup> *Id.* at 194.

QM loans is the structure of the secondary market.<sup>91</sup> If creditors adhere to the GSEs' guidelines, they gain access to a robust, highly liquid secondary market.<sup>92</sup> In contrast, while private market securitizations have grown somewhat in recent years, their volume is still a fraction of their pre-crisis levels.<sup>93</sup>

### *C. The Potential Market Impact of the Temporary GSE QM Loan Definition's Expiration*

As the Extension Proposal explained, the Bureau anticipates that two main types of conventional loans would be affected by the expiration of the Temporary GSE QM loan definition: High-DTI GSE loans (those with DTI ratios above 43 percent) and GSE-eligible loans without appendix Q-required documentation. Leaving the current fixed sunset date in place would affect these loans because they are currently originated as QM loans due to the Temporary GSE QM loan definition but would not be originated as General QM loans, and may not be originated at all, if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. This final rule refers to these loans as potentially displaced loans.

The Extension Proposal's analysis of the potential market impact of the Temporary GSE QM loan definition's expiration cited data and analysis from the Bureau's ANPR, as described below. None of the comments on the Extension Proposal challenged the data or analysis from the ANPR or the Extension Proposal related to the potential market impacts of the Temporary GSE QM loan definition's expiration.<sup>94</sup> The Bureau concludes that the data and analysis in the

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<sup>91</sup> *Id.* at 196.

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

<sup>93</sup> *Id.*

<sup>94</sup> As noted below in the Bureau's section 1022(b) analysis, two consumer advocate commenters that submitted a joint comment letter argued for a more complete analysis of reasonable alternatives and that the Bureau should redo

Extension Proposal and ANPR provide an appropriate estimate of the potential impact of the Temporary GSE QM loan definition's expiration for this final rule.

*High-DTI GSE Loans.* The ANPR provided an estimate of the number of loans potentially affected by the expiration of the Temporary GSE QM loan definition.<sup>95</sup> In providing the estimate, the ANPR focused on loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition because they have a DTI ratio above 43 percent. This final rule refers to these loans as High-DTI GSE loans. Based on data from the National Mortgage Database (NMDB), the Bureau estimated that there were approximately 6.01 million closed-end first-lien residential mortgage originations in the United States in 2018.<sup>96</sup> Based on supplemental data provided by the FHFA, the Bureau estimated that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—of those loans.<sup>97</sup> Of those 3.12 million loans, the Bureau estimated that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.<sup>98</sup> Thus, the Bureau estimated that as a result of the General QM loan definition's 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—were High-DTI GSE loans.<sup>99</sup> This estimate does not

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its analysis of benefits and costs when more data is available. However, these commenters did not challenge the Bureau's estimates of the potential market impacts of the Temporary GSE QM loan definition's expiration.

<sup>95</sup> 84 FR 37155, 37158-59 (July 31, 2019).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 37159.

<sup>98</sup> *Id.* The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinance loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

<sup>99</sup> *Id.*

include Temporary GSE QM loans that were eligible for purchase by either of the GSEs but were not sold to the GSEs.

*Loans Without Appendix Q-Required Documentation That Are Otherwise GSE-Eligible.*

In addition to High-DTI GSE loans, an additional, smaller number of Temporary GSE QM loans with DTI ratios of 43 percent or less when calculated using GSE underwriting guides would not fall within the General QM loan definition because their method of documenting and verifying income or debt is incompatible with appendix Q.<sup>100</sup> These loans would also likely be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. As explained in the Extension Proposal, the Bureau understands, from extensive public feedback and its own experience, that appendix Q does not specifically address whether and how to document and include certain forms of income. The Bureau understands these concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams.<sup>101</sup> As a result, these consumers' access to credit may be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect.

The Bureau's analysis of the market under the baseline focuses on High-DTI GSE loans because the Bureau estimates that most potentially displaced loans are High-DTI GSE loans. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate

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<sup>100</sup> *Id.* at 37159 n.58. Where these types of loans have DTI ratios above 43 percent, they would be captured in the estimate above relating to High-DTI GSE loans.

<sup>101</sup> For example, in qualitative responses to the Bureau's Lender Survey conducted as part of the Assessment Report, underwriting for self-employed consumers was one of the most frequently reported sources of difficulty in originating mortgages using appendix Q. These concerns were also raised in comments submitted in response to the Assessment RFI, noting that appendix Q is ambiguous with respect to how to treat income for consumers who are self-employed, have irregular income, or want to use asset depletion as income. *See* Assessment Report, *supra* note 27, at 200.

with precision the number of potentially displaced loans that do not fall within the other General QM loan requirements and are not High-DTI GSE loans. However, the Assessment Report did not find evidence of substantial numbers of loans in the non-GSE-eligible jumbo market being displaced when appendix Q verification requirements became effective in 2014.<sup>102</sup> Further, the Assessment Report found evidence of only a limited reduction in the approval rate of self-employed applicants for non-GSE eligible mortgages.<sup>103</sup> Based on this evidence, along with qualitative comparisons of GSE and appendix Q documentation requirements and available data on the prevalence of borrowers with non-traditional or difficult-to-document income (e.g., self-employed borrowers, retired borrowers, those with irregular income streams), the Bureau estimates this second category of potentially displaced loans is considerably less numerous than the category of High-DTI GSE loans. Nevertheless, the Bureau believes that, for some borrowers, there would be a meaningful impact on their access to credit because their method of documenting and verifying income or debt is incompatible with appendix Q.

*Additional Effects on Loans Not Displaced.* The Extension Proposal explained that, in addition to potentially displaced loans, loans that continue to be originated as QM loans after the expiration of the Temporary GSE QM loan definition would also be affected. After the sunset date, absent changes to the General QM loan definition, all loans with DTI ratios at or below 43 percent that are or would have been purchased and guaranteed as GSE loans under the Temporary GSE QM loan definition—approximately 2.16 million loans in 2018—and that

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<sup>102</sup> *Id.* at 107 (“For context, total jumbo purchase originations increased from an estimated 108,700 to 130,200 between 2013 and 2014, based on nationally representative NMDB data.”).

<sup>103</sup> *Id.* at 118 (“The Application Data indicates that, notwithstanding concerns that have been expressed about the challenge of documenting and verifying income for self-employed borrowers under the General QM standard and the documentation requirements contained in appendix Q to the Rule, approval rates for non-High-DTI, non-GSE eligible self-employed borrowers have decreased only slightly, by two percentage points.”).

continue to be originated as General QM loans after the provision expires would be required to verify income and debts according to appendix Q, rather than only according to GSE guidelines. Given the concerns raised about appendix Q’s ambiguity and lack of flexibility, this would likely entail both increased documentation burden for some consumers as well as increased costs or time-to-origination for creditors on some loans.<sup>104</sup> Commenters on the Extension Proposal did not offer additional estimates regarding the number of potentially displaced loans.

Focusing on High-DTI GSE loans, the Bureau expects that these loans will continue to comprise a significant proportion of mortgage originations through January 10, 2021, when the Temporary GSE QM loan definition was scheduled to expire.<sup>105</sup> The ANPR identified several ways that the market for loans that would have been High-DTI GSE loans may respond to the expiration of the Temporary GSE QM loan definition.<sup>106</sup> In doing so, the Bureau made assumptions about the future behavior of certain mortgage market participants: (1) that there is no change to the GSEs’ current policy that does not allow purchase of non-QM loans; and (2) that creditors’ preference for making Temporary GSE QM loans, and investors’ preference for purchasing such loans, is driven in part by the safe harbor provided to such loans and that these preferences would continue at least for some creditors and investors.<sup>107</sup>

The Bureau concludes that this analysis from the ANPR continues to provide an appropriate assessment of how the market for loans that would have been High-DTI GSE loans may have responded to the Temporary GSE QM loan definition’s expiration prior to the effective

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<sup>104</sup> See part V.B for additional discussion of concerns raised about appendix Q.

<sup>105</sup> 84 FR 37155, 37159 (July 31, 2019).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

date of amendments to the General QM definition. Therefore, the Bureau expects that many consumers who would have obtained High-DTI GSE loans would instead have obtained FHA-insured loans because FHA currently insures loans with DTI ratios up to 57 percent (with compensating factors).<sup>108</sup> The number of loans that would have moved to FHA would depend on FHA’s willingness and ability to insure such loans, on whether the FHA mortgage payment would be affordable to the consumer relative to any options in the private mortgage market, on whether FHA continues to treat all loans that it insures as QMs under its own QM rule, and on how many High-DTI GSE loans exceed FHA’s loan-amount limit.<sup>109</sup> For example, the Extension Proposal estimated that, in 2018, 11 percent of High-DTI GSE loans exceeded FHA’s loan-amount limit.<sup>110</sup> The Bureau considers this an outer limit on the share of High-DTI GSE loans that could have moved to FHA.<sup>111</sup> As explained in the Extension Proposal, the Bureau expects that loans that would have been originated as FHA loans instead of under the Temporary GSE QM loan definition would generally have cost materially more for many consumers.<sup>112</sup> The

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<sup>108</sup> *Id.* In fiscal year 2019, approximately 57 percent of FHA-insured purchase mortgages had a DTI ratio above 43 percent. U.S. Dep’t of Hous. & Urban Dev., *Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2019*, at 33 (Nov. 14, 2019), <https://www.hud.gov/sites/dfiles/Housing/documents/2019FHAAnnualReportMMIFund.pdf>.

<sup>109</sup> 84 FR 37155, 37159 (July 31, 2019).

<sup>110</sup> *Id.* In 2018, FHA’s county-level maximum loan limits ranged from \$271,050 to \$721,050. See U.S. Dep’t of Hous. & Urban Dev., *FHA Mortgage Limits*, <https://entp.hud.gov/idapp/html/hicostlook.cfm> (last visited Oct. 17, 2020).

<sup>111</sup> 84 FR 37155, 37159 (July 31, 2019).

<sup>112</sup> Interest rates and insurance premiums on FHA loans generally feature less risk-based pricing than conventional loans, charging more similar rates and premiums to all consumers. As a result, they are likely to cost more than conventional loans for consumers with stronger credit scores and larger down payments. Consistent with this pricing differential, consumers with higher credit scores and larger down payments chose FHA loans relatively rarely in 2018 Home Mortgage Disclosure Act (HMDA) data on mortgage originations. See Bureau of Consumer Fin. Prot., *Introducing New and Revised Data Points in HMDA* (Aug. 2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_new-revised-data-points-in-hmda\\_report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf).

Bureau also expects that some consumers offered FHA loans might have chosen not to take out a mortgage because of these higher costs.

It is also possible that some consumers who would have sought High-DTI GSE loans would have been able to obtain loans in the private market.<sup>113</sup> The ANPR noted that the number of loans absorbed by the private market would likely depend, in part, on whether actors in the private market are willing to assume the legal and credit risk associated with funding High-DTI GSE loans as non-QM loans or small-creditor portfolio QM loans<sup>114</sup> and, if so, whether actors in the private market would offer more competitive pricing or terms.<sup>115</sup> For example, as explained in the Extension Proposal, the Bureau estimates that 55 percent of High-DTI GSE loans in 2018 had credit scores at or above 680 and loan-to-value (LTV) ratios at or below 80 percent—credit characteristics traditionally considered attractive to actors in the private market.<sup>116</sup> The ANPR also noted that there are certain built-in costs to FHA loans—namely, mortgage insurance premiums—which could be a basis for competition and that depository institutions in recent years have shied away from originating and servicing FHA loans due to the obligations and risks associated with such loans.<sup>117</sup>

However, the Assessment Report found that a robust market for non-QM loans above the 43 percent DTI limit has not materialized as the Bureau had predicted. Therefore, there is

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<sup>113</sup> 84 FR 37155, 37159 (July 31, 2019).

<sup>114</sup> See 12 CFR 1026.43(e)(5) (extending QM status to certain portfolio loans originated by certain small creditors). In addition, section 101 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), Public Law 115-174, section 101, 132 Stat. 1296, 1297 (2018), amended TILA to add a safe harbor for small-creditor portfolio loans. See 15 U.S.C. 1639c(b)(2)(F).

<sup>115</sup> 84 FR 37155, 37159 (July 31, 2019).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

limited capacity in the non-QM market to provide access to credit if the Temporary GSE QM loan definition were to expire before a final rule amending the General QM loan definition has taken effect.<sup>118</sup> As described above, the non-QM market has been further reduced by the recent economic disruptions associated with the COVID-19 pandemic, with most mortgage credit now available in the QM lending space. The Bureau acknowledges that the slow development of the non-QM market, and the recent economic disruptions that may significantly hinder its development in the near term, may further reduce access to credit outside the QM space.

Finally, the ANPR noted that some consumers who would have sought High-DTI GSE loans may adapt to changing options and make different choices, such as adjusting their borrowing to result in a lower DTI ratio.<sup>119</sup> However, some consumers who would have sought High-DTI GSE loans may not have been able to obtain loans at all.<sup>120</sup>

#### *D. Why the Bureau Is Extending the Temporary GSE QM Loan Definition*

The Bureau anticipates that if the Temporary GSE QM loan definition expired as currently scheduled and there are no changes to the General QM loan definition prior to expiration, some High-DTI GSE loans and loans without appendix Q-required documentation that are otherwise GSE-eligible would not be made and some would cost consumers materially more.<sup>121</sup> In the General QM Proposal, the Bureau proposed to remove the General QM loan definition's DTI limit and replace it with a limit based on the loan's pricing. Under the General QM Proposal, a loan would meet the General QM loan definition only if the APR exceeds the

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<sup>118</sup> Assessment Report, *supra* note 27, at 198.

<sup>119</sup> 84 FR 37155, 37159 (July 31, 2019).

<sup>120</sup> *Id.*

<sup>121</sup> See *supra* part V.C.

APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set.<sup>122</sup> The Bureau expects that the amendments the Bureau proposed in the General QM Proposal would, among other things, allow most loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires.<sup>123</sup>

The Bureau is concerned about the likely effects on the availability and cost of credit if the Temporary GSE QM loan definition were to expire before final amendments to the General QM loan definition take effect. As explained in the Extension Proposal, while the Bureau can estimate the outer limit of the share of High-DTI GSE loans that could be originated by the FHA, the Bureau cannot estimate with precision the extent to which loans would be absorbed by the FHA or the characteristics of the particular loans that might be absorbed.<sup>124</sup> Similarly, while the Bureau also anticipates that the private market might absorb additional loans that would have been High-DTI GSE loans, the Bureau is uncertain as to the private market's capacity to absorb these loans in the short term—as a robust market for non-QM loans above the 43 percent DTI

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<sup>122</sup> The General QM Proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

<sup>123</sup> As described above in part III.C, the Bureau also recently issued the Seasoned QM Proposal, which would create a new category of QMs for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. 85 FR 53568 (Aug. 28, 2020). The Bureau notes that the Seasoned QM Proposal, if finalized, would not address the short-term access to credit concerns described here. The Seasoned QM Proposal would not address the likely effects on the availability and cost of credit if the Temporary GSE QM loan definition were to expire before final amendments to the General QM loan definition take effect, because among other things, as described in the Seasoned QM Proposal, the Seasoned QM definition would take effect at the same time that final amendments to the General QM loan definition take effect. *Id.* at 53569.

<sup>124</sup> Assuming they are still originated, potentially displaced loans made with high LTVs or to consumers with low credit scores are the least likely to be absorbed by the private market, and thus most likely to be absorbed by the FHA. The exact characteristics of loans likely to be absorbed by the FHA would depend on the relative pricing and underwriting requirements of FHA and private market alternatives.

limit has not materialized as the Bureau had predicted and as the non-QM market has been further reduced by the current economic disruptions associated with the COVID-19 pandemic. And, as noted, the Bureau lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the General QM loan definition due to appendix Q-related issues and are not High-DTI GSE loans. Despite these uncertainties, it is likely that some consumers who would have obtained loans under the Temporary GSE QM loan definition—and who would be able to obtain loans under the revised General QM loan definition, as separately proposed by the Bureau—would not have been able to obtain loans at all if the Temporary GSE QM loan definition were allowed to expire before final amendments to the General QM loan definition have gone into effect.<sup>125</sup> Further, for loans absorbed by the FHA and the private market in the absence of the Temporary GSE QM loan definition, there is a significant risk that some consumers would have paid more for these loans, although any pricing effects would depend on the characteristics of the particular loans that would be originated as FHA loans or in the private market.<sup>126</sup>

To prevent these likely effects on the availability and cost of credit if the Temporary GSE QM loan definition expired before final amendments to the General QM loan definition take effect, the Bureau is extending the Temporary GSE QM loan definition until the mandatory compliance date of a final rule issued by the Bureau amending the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first. As discussed below in the

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<sup>125</sup> See *supra* part V.C, noting that some consumers who would have sought High-DTI GSE loans may make different choices, such as by adjusting their borrowing to result in a lower DTI ratio.

<sup>126</sup> The Assessment Report noted that, while there did not appear to be a marked change in the relative price of non-QM High-DTI loans immediately following the implementation of the ATR/QM Rule, other research has found a 25 basis point premium for non-QM High-DTI loans in more recent years. Assessment Report, *supra* note 27, at 121-22.

section-by-section analysis, commenters to the Extension Proposal were supportive of the Bureau’s proposal to extend the sunset of the Temporary GSE QM loan definition rather than allowing it to expire on January 10, 2021. The Bureau is issuing this extension to ensure that responsible, affordable credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before these amendments take effect.<sup>127</sup>

The Bureau stated in the January 2013 Final Rule that, for a limited period of time and while the GSEs are under conservatorship of the FHFA, it believed that GSE-eligible loans are originated with appropriate consideration of ability to repay.<sup>128</sup> Under current conditions, the Bureau finds that it is appropriate to extend that presumption for a short period until the mandatory compliance date of Bureau amendments to the General QM loan definition, in light of concerns about effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before a rule revising the General QM loan definition takes effect.

Under the conservatorship clause in the current rule, the Temporary GSE QM loan definition expires with respect to a GSE when that GSE exits conservatorship, even if that occurs before January 10, 2021. Consistent with the Extension Proposal, this final rule does not amend this provision. The Bureau addresses the comments it received related to the conservatorship clause in the section-by-section analysis of § 1026.43(e)(4)(iii)(B), below.

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<sup>127</sup> The Bureau expects to finalize a rule amending the General QM loan definition, at which point the Temporary GSE QM loan definition would expire under this final rule. However, the Bureau notes that in the unlikely event that such a rule is not finalized and the current General QM loan definition remains in place, the Bureau would revisit the Temporary GSE QM loan definition and take appropriate action. As noted above, the Bureau does not intend to maintain indefinitely a presumption that loans eligible for purchase or guarantee by either of the GSEs have been originated with appropriate consideration of the consumer’s ability to repay.

<sup>128</sup> 78 FR 6408, 6534 (Jan. 30, 2013).

## **VI. Section-by-Section Analysis**

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

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

##### *43(e)(4) Qualified Mortgage Defined—Special Rules*

###### *43(e)(4)(iii) Sunset of Special Rules*

###### *43(e)(4)(iii)(B)*

Section 1026.43(e)(4)(iii)(B) provides that the Temporary GSE QM loan definition is available only for covered transactions consummated on or before January 10, 2021.<sup>129</sup> The Bureau proposed to revise § 1026.43(e)(4)(iii)(B) to state that the Temporary GSE QM loan definition is available only for covered transactions consummated on or before the effective date of a final rule issued by the Bureau amending § 1026.43(e)(2). Proposed § 1026.43(e)(4)(iii)(B) also would have stated that the Bureau will amend § 1026.43(e)(4)(iii)(B) as of that effective date to reflect the new status. The Bureau also proposed conforming amendments to comment 43(e)(4)-3. The Bureau did not propose to amend the conservatorship clause in § 1026.43(e)(4)(ii)(A). This final rule amends § 1026.43(e)(4)(iii)(B) largely as the Bureau proposed, with minor modifications as described below.

#### *Comments Received*

The Bureau received 29 comments in response to the Extension Proposal from industry, consumer advocates, and others. All commenters supported extending the Temporary GSE QM loan definition. No commenter recommended that the Temporary GSE QM loan definition

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<sup>129</sup> Section 1026.43(e)(4)(iii)(B) also applies to the other temporary QM loan definitions in § 1026.43(e)(4). However, as noted above in part II, these other temporary QM loan definitions have expired because the relevant Federal agencies have issued their own QM rules. *See, e.g.*, 24 CFR 203.19 (HUD rule).

expire earlier than the effective date of final amendments to the General QM loan definition. Many commenters stated that they agreed with the Bureau that extending the Temporary GSE QM loan definition would ensure that responsible, affordable credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before these amendments take effect.

Several commenters recommended that the Bureau finalize the Extension Proposal as proposed. Several other commenters recommended modifications to the proposal, as described and organized below based on the topic of concern.

*Gap in coverage.* Several industry commenters recommended that the Bureau modify the proposed sunset date to prevent a gap around the effective date of final amendments to the General QM loan definition in which neither the Temporary GSE QM loan definition nor the revised General QM loan definition would apply to certain loans. These commenters noted that, under the Extension Proposal, the Temporary GSE QM loan definition would be available only for covered transactions consummated on or before the effective date of final amendments to the General QM loan definition. At the same time, as these commenters noted, the General QM Proposal provided that the revised General QM loan definition would apply to covered transactions for which creditors receive an application on or after the effective date of the final amendments to the General QM loan definition. These commenters stated that, as a result, when a creditor receives an application before the effective date of final amendments to the General QM loan definition, but the loan is consummated after that effective date, neither the Temporary GSE QM loan definition nor the revised General QM loan definition would apply. Consequently, loans that would have been QMs under the Temporary GSE QM loan definition—and that would have been eligible for QM status under the revised General QM loan definition—

would not be eligible for QM status under either the Temporary GSE QM loan definition (because the loan was consummated after the effective date of a final rule amending the General QM loan definition) or the revised General QM loan definition (because the creditor received the application before the effective date of a final rule amending the General QM loan definition).

These industry commenters recommended several options to prevent such a gap. Several commenters suggested that the Bureau prevent this gap by having the Temporary GSE QM loan definition expire six months after the effective date of final amendments to the General QM loan definition, rather than on the effective date. This approach would create an overlap period in which creditors could originate QMs under either the Temporary GSE QM loan definition or the revised General QM loan definition. Two commenters suggested that the Bureau align the sunset date with the effective date of final amendments to the General QM loan definition based on the date the creditor received the consumer's application. Under this approach, the Temporary GSE QM loan definition would be available only for covered transactions for which the creditor receives the consumer's application before the effective date of final amendments to the General QM loan definition, and the revised General QM loan definition would apply to covered transactions for which creditors receive an application on or after this effective date. One commenter recommended that the Bureau adopt this approach but provide that the Temporary GSE QM loan definition would cease to be available six months after the effective date of final amendments to the General QM loan definition.

Two industry commenters opposed aligning the sunset date of the Temporary GSE QM loan definition with the effective date of final amendments to the General QM loan definition based on the application date. These commenters argued that this standard would be unclear because "application" is not clearly defined for purposes of the ATR/QM Rule. One of these

commenters recommended that, if the Bureau adopted this approach, it clarify that “application” has the same definition as under the Bureau’s TILA-RESPA<sup>130</sup> Integrated Disclosure Rule (TRID). The other commenter stated that the Bureau should not align the sunset date of the Temporary GSE QM loan definition with the effective date of final amendments to the General QM loan definition based on the application date, because creditors do not typically maintain a non-TRID application date in their systems. This commenter also stated that QM status is not determined at the time of application, so the proposed approach may create problems if a loan application is received prior to the sunset date but is no longer eligible for purchase or guarantee by the GSEs at the time of consummation after the sunset date.

One industry commenter suggested that the Bureau could prevent this gap in coverage by aligning the sunset date with the effective date of a final rule amending the General QM loan definition based on the date of consummation. Under this approach, the Temporary GSE QM loan definition would be available for covered transactions consummated before the effective date of a final rule amending the General QM loan definition (as the Bureau proposed), and then, in that final rule, the Bureau would provide that the revised General QM loan definition would apply to covered transactions consummated on or after the effective date. One industry commenter opposed this approach, stating that it would effectively reduce the length of the implementation period for the revised General QM loan definition. One industry commenter also suggested that both the Temporary GSE QM loan definition and the revised General QM loan definition be available for loans in process on the effective date of the revised General QM loan definition.

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<sup>130</sup> Real Estate Settlement Procedures Act of 1974 (RESPA), Public Law 93-533, 88 Stat. 1274 (1974).

*Other comments on the sunset date.* As noted above, several industry commenters suggested that the Bureau prevent a gap around the effective date of final amendments to the General QM loan definition by having the Temporary GSE QM loan definition expire six months after the effective date of final amendments to the General QM loan definition, rather than on the effective date. Several industry commenters and one individual commenter also recommended this approach to address a different concern. These commenters stated that an overlap between the Temporary GSE QM loan definition and the revised General QM loan definition would help facilitate the implementation of the revised General QM loan definition.

Many of these commenters noted that creditors will need to update their business processes and information technology systems as they prepare to comply with the revised General QM loan definition. These commenters stated that an overlap would reduce the likelihood that unforeseen implementation problems arising after the effective date of the General QM amendments could disrupt creditors' ability to originate loans. One of these commenters also noted that secondary market participants will be adjusting to the revised definition. Several of these commenters stated that the COVID-19 pandemic is straining creditors' resources and personnel, making it more difficult for them to adapt to the new definition. A few of these commenters stated that an overlap period 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 COVID-19 pandemic.

Another commenter stated that an overlap would protect creditors that are affected by clarifications the Bureau makes to a final rule amending the General QM loan definition after it takes effect. With respect to how long the Temporary GSE QM loan definition and the revised

General QM loan definition would overlap, commenters suggested periods between four months and one year.

In addition to the comments noted above, three other commenters recommended longer extensions of the sunset date to facilitate implementation of a final rule amending the General QM loan definition. An individual commenter requested a two-year extension of the sunset date until January 10, 2023. An industry commenter recommended an extension of 18 to 24 months, at a minimum.<sup>131</sup> Another industry commenter suggested that the Temporary GSE QM loan definition expire in January 2022 or the effective date of a final rule amending the General QM loan definition, whichever is later.

In addition to the general concerns about implementation noted above, two industry commenters stated that, in determining when the Temporary GSE QM loan definition should expire, the Bureau should consider the GSEs' recently mandated changes to the Uniform Residential Loan Application (URLA). The GSEs are requiring creditors to use a redesigned version of the URLA for all loan applications received on or after March 1, 2021. The GSEs have stated that beginning on March 1, 2022, they will no longer accept the previous URLA.<sup>132</sup> The two industry commenters stated that implementing the new URLA will require creditors to undertake extensive systems changes. One of these industry commenters stated that requiring creditors to adapt to a revised General QM loan definition in the first six months of 2021 would compound this burden significantly. This commenter recommended that the Bureau extend the

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<sup>131</sup> These commenters seemed to assume that a final rule issued by the Bureau amending the General QM loan definition would take effect sooner than 18 to 24 months from January 10, 2021, perhaps in light of the Bureau's statement in the Extension NPRM that it does not intend to issue a final rule amending the General QM loan definition early enough for it to take effect before April 1, 2021. 85 FR 41448, 41456 (July 10, 2020).

<sup>132</sup> Fannie Mae & Freddie Mac, *Extended URLA Implementation Timeline* (Apr. 14, 2020), <https://singlefamily.fanniemae.com/media/22661/display>.

Temporary GSE QM loan definition to expire six months after the revised General QM loan definition. The other commenter requested that the Bureau address this concern by extending the Temporary GSE QM loan definition to expire on March 1, 2022, or on the effective date of a final rule amending the General QM loan definition, whichever is later.

Two consumer advocate commenters that submitted a joint comment letter recommended that the Bureau extend the Temporary GSE QM loan definition indefinitely in this rulemaking and determine its sunset date in a final rule amending the General QM loan definition. These commenters also recommended that the Temporary GSE QM loan definition remain in effect until the latest of the following events: a date certain that is no earlier than January 2022 and preferably in 2023; six months after the end of the COVID-19 national emergency; or the effective date of a final rule amending the General QM loan definition. These commenters stated that determining the Temporary GSE QM loan definition's sunset date in a final rule amending the General QM loan definition, instead of in this rulemaking, would allow the Bureau to adjust its approach to the expiration of the Temporary GSE QM loan definition based on the comments the Bureau receives on the General QM Proposal regarding the implementation of the General QM loan definition. In the commenters' view, this would better ensure a smooth transition to any revised General QM loan definition. The commenters stated that the Bureau would tie its hands by linking the sunset date with the effective date of a final rule amending the General QM loan definition; that doing so would create greater uncertainty for creditors; and that uncertainty is destabilizing and tends to reduce access to credit. These commenters also stated that the Temporary GSE QM loan definition should remain in place until the Bureau assesses the impact of the movement for racial justice on mortgage markets as well as the impact of the COVID-19

pandemic, including the decline of the non-QM market and creditors' increasing reliance on GSE and FHA loans.<sup>133</sup>

An industry commenter recommended that the Bureau not extend the Temporary GSE QM loan definition indefinitely. The commenter stated that the Temporary GSE QM loan definition provides significant advantages to the GSEs by codifying their underwriting parameters into the QM definition, which, according to the commenter, produces excessive reliance on the GSEs while stifling innovation by other market participants. The commenter also recommended that the Bureau not extend the Temporary GSE QM loan definition to a date certain. In the commenter's view, because the effective date of final amendments to the General QM loan definition is not yet known, extending the definition to a date certain could result in a sunset date that is too early (causing a gap between the Temporary GSE QM loan definition and a revised General QM loan definition) or too late (causing the Temporary GSE QM loan definition to remain in place longer than necessary, resulting in the perpetuation of the concerns relating to an indefinite extension that the commenter identified).

Several industry commenters recommended that, in a final rule amending the General QM loan definition, the Bureau adopt a longer implementation period—*i.e.*, the time period after such a final rule is issued and before creditors are required to transition from the current General QM loan definition to the revised General QM loan definition—than the six-month period the Bureau proposed. One industry commenter requested that the Bureau provide a 90-day grace period for compliance with the revised definition. The Bureau considers these to be comments

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<sup>133</sup> The Bureau addresses this group's comments on the conservatorship clause in the subsection below and on the Bureau's section 1022 analysis in part VII.A.1 below.

on the General QM Proposal and best addressed in that rulemaking. The Bureau will consider these comments as it develops a final rule to amend the General QM loan definition.

*Conservatorship clause.* Three industry commenters and the two consumer advocacy groups that submitted a joint comment letter recommended that the Bureau remove the conservatorship clause from § 1026.43(e)(ii)(A)(1). Removing the conservatorship clause would result in the Temporary GSE QM loan definition not expiring with respect to a GSE if that GSE exited conservatorship. These commenters noted that the status of the conservatorships is outside of the Bureau’s control and stated that, if one or both conservatorships were to end on short notice, the sudden expiration of the Temporary GSE QM loan definition would create turmoil in the market and reduce access to credit. Two industry commenters stated that the Bureau should clarify in advance of the end of conservatorship what steps the Bureau would take with respect to the Temporary GSE QM loan definition if the conservatorships were to end.

#### *The Final Rule*

This final rule amends § 1026.43(e)(4)(iii)(B) to provide that, unless otherwise expired under § 1026.43(e)(4)(iii)(A),<sup>134</sup> the special rules in § 1026.43(e)(4) are available only for covered transactions for which the creditor receives the consumer’s application before the mandatory compliance date of a final rule issued by the Bureau amending § 1026.43(e)(2).<sup>135</sup>

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<sup>134</sup> 12 CFR 1026.43(e)(4)(iii)(A) states that each of the special rules described in 12 CFR 1026.43(e)(4)(ii)(B) through (E)—which provide that mortgages eligible to be insured or guaranteed (as applicable) by HUD, VA, USDA, and RHS are QMs—shall expire on the effective date of a rule issued by each respective agency pursuant to its authority under TILA section 129C(b)(3)(ii) to define a QM.

<sup>135</sup> The Bureau uses the term “mandatory compliance date” because this is the date on which creditors that wish to originate General QM loans will be required to comply with the revised General QM loan definition. As of the mandatory compliance date, the current General QM loan definition will no longer be available. The Bureau’s use of the term does not imply that creditors are required to use the General QM loan definition to comply with the ATR/QM Rule’s ability-to-repay requirement.

Revised § 1026.43(e)(4)(iii)(B) also states that the Bureau will amend § 1026.43(e)(4)(iii)(B) prior to that mandatory compliance date to reflect the new status.

This final rule also makes conforming changes to comment 43(e)(4)-3. As revised, comment 43(e)(4)-3 explains that the Temporary GSE QM loan definition applies only to loans for which the creditor receives the consumer's application before the mandatory compliance date of a final rule issued by the Bureau amending § 1026.43(e)(2), regardless of whether Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) continues to operate under the conservatorship or receivership of the FHFA. The comment also explains that, accordingly, the Temporary GSE QM loan definition is available only for covered transactions: (i) that are consummated on or before the date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the FHFA and (ii) that are transactions for which the creditor receives the consumer's application before the mandatory compliance date of a final rule issued by the Bureau amending § 1026.43(e)(2), as provided by § 1026.43(e)(4)(iii). This final rule also revises this comment to note that the Bureau will amend this comment prior to the mandatory compliance date of a final rule issued by the Bureau amending § 1026.43(e)(2) to reflect the new status.<sup>136</sup>

The Bureau has made two substantive modifications to the proposal. The first is that this final rule links the expiration of the Temporary GSE QM loan definition to the "mandatory compliance date" of a final rule amending the General QM loan definition instead of to the

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<sup>136</sup> The Bureau notes that the proposed extension to the Temporary GSE QM loan definition's sunset date does not apply to the temporary points-and-fees cure provision in § 1026.43(e)(3)(iii), which is also set to expire on January 10, 2021. Comments on the expiration date for the temporary points-and-fees cure provision at § 1026.43(e)(3)(iii) are outside the scope of this rulemaking.

“effective date” of such a final rule. Specifically, under this final rule, 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 a final rule issued by the Bureau amending the General QM loan definition, rather than covered transactions consummated on or before the “effective date” of such a final rule, as the Bureau proposed.

The Bureau is not adopting an “overlap period” in this final rule by keeping the Temporary GSE QM loan definition in effect *after* the date creditors are required to transition from the current General QM loan definition to the revised General QM loan definition, as some commenters suggested. This is because, in a final rule amending the General QM loan definition, after considering the comments in that rulemaking, the Bureau intends to establish an implementation period—*i.e.*, the time period after such a final rule is issued and before creditors are required to transition from the current General QM loan definition to the revised General QM loan definition—that provides the amount of time necessary to facilitate a smooth and orderly transition to a revised General QM loan definition. Establishing an “overlap period” that extends after the date creditors are required to transition from the 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 seeks 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, and no longer, because the Bureau concludes 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 concludes that, as long as the Temporary GSE QM loan definition continues to be in effect, the

non-GSE private market is less likely to rebound and that the existence of the Temporary GSE QM loan definition may be limiting the development of the non-GSE private market. For these reasons, the Bureau concludes that it is appropriate for the Temporary GSE QM loan definition to remain in place no longer than the date creditors are required to transition from the current General QM loan definition to the revised General QM loan definition.

However, while the Bureau is not adopting an “overlap period” in this final rule by keeping the Temporary GSE QM loan definition in effect *after* the date creditors are required to transition from the current General QM loan definition to the revised General QM loan definition, the Bureau may choose, in a final rule amending the General QM loan definition, to adopt an “optional early compliance period” whereby the revised General QM loan definition would become available *before* the date creditors are required to transition from the current General QM loan definition to the revised General QM loan definition. Such an approach would accommodate those creditors that are able to transition to, and wish to start using, the revised General QM loan definition sooner than the date creditors are required to make the transition, a date the Bureau expects to select based on the time needed for the industry as a whole to make the transition. If the Bureau adopts such an optional early compliance period in a final rule amending the General QM loan definition, the revised General QM loan definition would become available on the “effective date” of such a final rule; it would coexist with the current General QM loan definition for a period of time; and then the current General QM loan definition would expire on the “mandatory compliance date” of such a final rule.<sup>137</sup> If the

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<sup>137</sup> For example, the Bureau adopted an optional early compliance period in 2017 amendments to TRID. 82 FR 37656, 37656 (Aug. 11, 2017) (“The final rule is effective October 10, 2017. However, the mandatory compliance date is October 1, 2018.”); *see also id.* at 37763-37765. The details of an optional early compliance period for the General QM loan definition may differ from the 2017 TRID amendments.

Bureau does not adopt an optional early compliance period in a final rule amending the General QM loan definition, the “effective date” and “mandatory compliance date” would be the same date. In this case, the revision from “effective date” to “mandatory compliance date” in this final rule would have no substantive effect.

The Bureau concludes that, to preserve the possibility of adopting an optional early compliance period in a final rule amending the General QM loan definition, it is appropriate for the Temporary GSE QM loan definition to expire on the mandatory compliance date of a final rule amending the General QM loan definition (*i.e.*, the end of the optional early compliance period) instead of on the effective date of such a final rule (*i.e.*, the beginning of the optional early compliance period). The Bureau expects that, if it were to adopt an optional early compliance period in a final rule amending the General QM loan definition, some creditors may not be ready to transition away from the Temporary GSE QM loan definition and to the revised General QM loan definition on the effective date. In contrast, because the Bureau intends to establish an adequate implementation period (as described above), it expects creditors to be ready to do so by the mandatory compliance date. Therefore, linking the expiration of the Temporary GSE QM loan definition to the mandatory compliance date of such a final rule will best ensure a smooth and orderly transition away from the Temporary GSE QM loan definition and toward the revised General QM loan definition.

*Gap in coverage.* The second substantive modification to the proposal addresses the concern several commenters raised about the gap around the effective date of final amendments to the General QM loan definition when, under the proposal, neither the Temporary GSE QM loan definition nor the revised General QM loan definition would have applied. This gap in coverage likely would have resulted in a temporary reduction in access to credit for some

consumers because creditors would have been concerned that loans for which they receive an application within a few months of the effective date of final amendments to the General QM loan definition may close after that effective date and would not be eligible for either the Temporary GSE QM loan definition or the revised General QM loan definition. The Bureau did not intend that result when it issued the proposed rule.

In this final rule, the Bureau addresses this concern by providing 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 (rather than covered transactions “consummated on or before” the effective date of final amendments to the General QM loan definition, as the Bureau proposed). This approach harmonizes with the proposed effective date in the General QM Proposal, under which the revised General QM loan definition would apply to covered transactions for which the creditor receives the consumer’s application on or after the effective date of a final rule amending the General QM loan definition. The Bureau concludes that aligning the sunset date with the proposed effective date of final amendments to the General QM loan definition based on the date the creditor received the consumer’s application would address the Bureau’s access-to-credit concern by preventing a gap between the two definitions.

For the reasons described above, the Bureau is not addressing the gap by extending the Temporary GSE QM loan definition beyond the date creditors are required to transition from the current General QM loan definition to the revised General QM loan definition, as some commenters suggested. The Bureau is also not addressing this gap by aligning the sunset date with the General QM Proposal based on the date of consummation of mortgages. The Bureau is concerned about this approach because, as this effective date draws closer, this approach would

create uncertainty for creditors about which QM definition (*i.e.*, the Temporary GSE QM loan definition or the revised General QM loan definition) would apply to a particular loan, given that creditors would not know for certain when consummation would occur.

To address concerns raised by commenters that the meaning of “application” may be unclear if the Bureau aligned the sunset date with the effective date of final amendments to the General QM loan definition based on the date the creditor received the consumer’s application, this final rule adds new comment 43(e)(4)-4. This new comment clarifies the meaning of application for purposes of § 1026.43(e)(4)(iii)(B).<sup>138</sup>

Regulation Z contains two definitions of “application.” Section 1026.2(a)(3)(i) defines “application” as the submission of a consumer’s financial information for the purposes of obtaining an extension of credit. This definition applies to all transactions covered by Regulation Z. Section 1026.2(a)(3)(ii) also contains a more specific definition of “application.” Under this definition, for transactions subject to § 1026.19(e), (f), or (g)—*i.e.*, transactions subject to TRID—an application consists of the submission of the consumer’s name, the consumer’s income, the consumer’s social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. The more specific definition of application in § 1026.2(a)(3)(ii) applies not just for purposes of TRID, but extends to all transactions subject to TRID. Therefore, for transactions that are subject to the ATR/QM Rule and that are also subject to TRID, the Bureau concludes that the more specific definition applies for purposes of the ATR/QM Rule as well. However, for

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<sup>138</sup> This final rule also renames previous comments 43(e)(4)-4 and -5 as 43(e)(4)-5 and -6, respectively.

transactions that are subject to the ATR/QM Rule but that are not subject to TRID,<sup>139</sup> the Bureau finds that there may be ambiguity as to when the creditor received the consumer’s application for purposes of the sunset date in § 1026.43(e)(4)(iii)(B). This potential ambiguity arises because the general definition of application in § 1026.2(a)(3)(i) is less precise than the TRID definition.

To address this potential ambiguity, new comment 43(e)(4)-4 clarifies that, for transactions that are not subject to TRID, creditors can determine the date the creditor received the consumer’s application for purposes of § 1026.43(e)(4)(iii)(B) in accordance with either § 1026.2(a)(3)(i) or (ii). The Bureau concludes that this clarification is appropriate because it will facilitate compliance with § 1026.43(e)(4)(iii)(B).

The Bureau disagrees with the industry commenter’s assertion that it would be problematic to align the sunset date with the proposed effective date in the General QM Proposal based on the date the creditor received the consumer’s application. As noted, that commenter asserted that because creditors do not determine QM status at the time of application, defining a loan as a Temporary GSE QM at the time of application may create problems if the loan is later changed and, as a result, is no longer eligible for sale at the time of consummation. However, under the Bureau’s approach, loans would not be defined as QMs at the time of application. Rather, the application date would determine whether the loan is eligible for the Temporary GSE QM loan definition or whether it is eligible for the revised General QM loan definition.

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<sup>139</sup> The ATR/QM Rule generally applies to closed-end consumer credit transactions that are secured by a dwelling, as defined in 12 CFR 1026.2(a)(19), including any real property attached to a dwelling. 12 CFR 1026.43(a). Therefore, the ATR/QM Rule applies to a dwelling, as defined in § 1026.19(a), whether or not it is attached to real property. In contrast, TRID generally applies to closed-end consumer credit transactions secured by real property or a cooperative unit. 12 CFR 1026.19(e)(1)(i). Therefore, some transactions that are a secured by a dwelling that is not considered real property under State or other applicable law will be subject to the ATR/QM Rule but not to TRID.

*Other comments on the sunset date.* As noted above, the Bureau declines to extend the Temporary GSE QM loan definition beyond the mandatory compliance date of final amendments to the General QM loan definition. The Bureau recognizes that creditors will need to update their business processes and information technology systems as they prepare to comply with the revised General QM loan definition, and that an update process often includes making planned system changes, testing those changes, and making further revisions. The Bureau also acknowledges that secondary market participants will need to adjust to the revised definition.

However, as noted above, the Bureau plans, in a final rule amending the General QM loan definition, to establish an implementation period—*i.e.*, the time period after such a final rule is issued and before creditors are required to transition from the current General QM loan definition to the revised General QM loan definition—that provides the amount of time necessary to facilitate a smooth and orderly transition to a revised General QM loan definition, after considering the comments in that rulemaking. Thus, establishing an overlap period beyond this implementation period 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 seeks 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, and no longer, because the Bureau concludes that the Temporary GSE QM loan definition has certain negative effects on the mortgage market, as noted above.

In the Bureau’s view, commenters have not established why an overlap period would be necessary to facilitate a smooth and orderly transition to a revised General QM loan definition when the Bureau establishes a sufficient implementation period for the final rule amending that definition. Commenters expressed general concerns that unforeseen compliance issues may arise

after the implementation period ends, but the same is true in adapting to any new rule of this magnitude and, as stated above, the Bureau intends to adopt an implementation period that gives creditors and the secondary market enough time to prepare to comply with the revised definition.<sup>140</sup> Commenters also suggested that an overlap period 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 COVID-19 pandemic. However, based on its analysis of the current state of the mortgage market, as described in part II.D above, the Bureau does not believe that current conditions in the mortgage market justify a longer extension on these grounds, particularly in light of the Bureau’s concerns about the negative effects of the Temporary GSE QM loan definition on the mortgage market.

The Bureau also declines to extend the Temporary GSE QM loan definition indefinitely in this rulemaking and determine its sunset date in a final rule amending the General QM loan definition, as the two consumer advocate commenters suggest.<sup>141</sup> The Bureau has not yet issued a final rule amending the General QM loan definition, so the contours of a revised General QM loan definition are not yet clear. However, the Bureau determines that it is nevertheless appropriate for this final rule to provide that the Temporary GSE QM loan definition will expire on the mandatory compliance date of a final rule amending the General QM loan definition. As noted above in the Bureau’s response to comments recommending an overlap period, the Bureau

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<sup>140</sup> As noted above, the Bureau may consider adopting an optional early compliance period in a final rule amending the General QM loan definition. An optional early compliance period would allow creditors who are ready to begin using the revised General QM loan definition early to do so—and to work out unforeseen compliance issues that arise before the Temporary GSE QM loan definition expires—without the Bureau having to extend the Temporary GSE QM loan definition beyond the end of the implementation period.

<sup>141</sup> No commenter recommended that the Bureau extend the Temporary GSE QM loan definition indefinitely without stating that the Bureau should determine the Temporary GSE QM loan definition’s sunset date in a final rule amending the General QM loan definition. The Bureau declines to do so for the reasons stated in the Extension Proposal. See 85 FR 41448, 41457 (July 10, 2020).

plans, in a final rule amending the General QM loan definition, to establish an implementation period that provides the amount of time necessary to facilitate a smooth and orderly transition to a revised General QM loan definition. Establishing a sufficient implementation period—based on the comments received on the effective date the Bureau proposed in the General QM Proposal—will help ensure a smooth transition away from the Temporary GSE QM loan definition and toward the revised General QM loan definition. Second, as noted above in the Bureau’s response to the comment recommending an overlap period to address the effective date gap issue, the Bureau seeks 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, and no longer, because the Bureau concludes that the Temporary GSE QM loan definition has certain negative effects on the mortgage market. Third, if market conditions change or other circumstances arise between now and the time the Bureau issues a final rule amending the General QM loan definition, the Bureau could choose to extend the Temporary GSE QM loan definition for a longer period of time.

The Bureau also declines to extend the sunset date in § 1026.43(e)(4)(iii)(B) to a date certain, as some commenters suggested. The Bureau is not extending the sunset date to a date certain because the chosen date could result in too long or too short an extension. The Bureau is concerned that too short an extension may not provide the Bureau with adequate time to finalize amendments to the General QM loan definition and creditors with enough time to bring their operations into compliance with any amendments adopted by the Bureau. At the same time, the Bureau is concerned that too long an extension would have the same type of negative effects as the Bureau describes above regarding making the Temporary GSE QM loan definition permanent, without any offsetting benefits because a longer extension is not needed to provide

the Bureau with adequate time to consider, propose, and promulgate amendments to the General QM loan definition or industry to implement those amendments.

*Conservatorship clause.* The Bureau also declines to eliminate the conservatorship clause in § 1026.43(e)(4)(ii)(A). When the Bureau adopted the January 2013 Final Rule, the FHFA’s conservatorship of the GSEs was central to its willingness to presume that loans that are eligible for purchase, guarantee, or insurance by the GSEs would be originated with appropriate consideration of consumers’ ability to repay.<sup>142</sup> The Bureau declines to eliminate the conservatorship clause because the Bureau is concerned about presuming that loans eligible for purchase or guarantee by either of the GSEs have been originated with appropriate consideration of the consumer’s ability to repay, if the GSEs are not under conservatorship. Furthermore, as the Bureau stated in the Extension Proposal, the Bureau expects that the conservatorships will remain in place until the Temporary GSE QM loan definition would expire under this final rule. As the Bureau stated in the Extension Proposal, in the event that it appears that a final rule amending the General QM loan definition will not be in effect at the time the conservatorship of one or both of the GSEs is terminated, the Bureau will evaluate at that point what, if any, steps to take in response to such a termination of conservatorship.

As with the January 2013 Final Rule, the Bureau issues this final rule pursuant to its authority under TILA sections 129C(b)(3)(B)(i) and 105(a) and Dodd-Frank Act section 1022(b)(1). For the reasons described above in part V.D, the Bureau determines that this final

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<sup>142</sup> 78 FR 6408, 6534 (Jan. 13, 2013) (“In light of this significant Federal role and the government’s focus on affordability in the wake of the mortgage crisis, the Bureau believes it is appropriate, for the time being, to presume that loans that are eligible for purchase, guarantee, or insurance by the designated Federal agencies and the GSEs while under conservatorship have been originated with appropriate consideration of consumers’ ability to repay, where those loans also satisfy the requirements of § 1026.43(e)(2) concerning restrictions on product features and total points and fees limitations.”).

rule’s extension of the Temporary GSE QM loan definition’s sunset date is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C, as well as necessary and appropriate to effectuate the purposes of TILA section 129C—including the purpose of assuring 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. For these same reasons, the Bureau determines that the extension is necessary to effectuate the purposes of TILA, which include, among other things, the above-described purpose of TILA section 129C.

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

### *A. Overview*

As discussed above, this final rule will delay the scheduled expiration of the Temporary GSE QM loan definition from January 10, 2021 to the mandatory compliance date of a final rule issued by the Bureau amending the General QM loan definition. The Bureau’s objective with this final rule is to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition and to ensure access to responsible, affordable mortgage credit upon its expiration.

In developing this final rule, 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 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.

### *1. Data and evidence*

The discussion in these impact analyses relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA<sup>143</sup> and NMDB<sup>144</sup> data, as well as data obtained from industry, other regulatory agencies, and other publicly available sources. 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 this final rule, including the extent to which DTI ratios are probative of a consumer's ability to repay, the effect of rebuttable presumption status relative to safe-harbor status on access to credit, and 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.

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<sup>143</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/>.

<sup>144</sup> The NMDB, jointly developed by the FHFA and the Bureau, provides de-identified loan characteristics and performance information for a 5 percent sample of all mortgage originations from 1998 to the present, supplemented by de-identified loan and borrower characteristics from Federal administrative sources and credit reporting data. See Bureau of Consumer Fin. Prot., *Sources and Uses of Data at the Bureau of Consumer Financial Protection*, at 55-56 (Sept. 2018), [https://www.consumerfinance.gov/documents/6850/bcfp\\_sources-uses-of-data.pdf](https://www.consumerfinance.gov/documents/6850/bcfp_sources-uses-of-data.pdf). Differences in total market size estimates between NMDB data and HMDA data are attributable to differences in coverage and data construction methodology.

The data the Bureau relied upon provide detailed information on the number, characteristics, and performance of mortgage loans originated in recent years. However, they do not provide information on creditor costs. As a result, analyses of any impacts of the Extension Proposal on creditor costs, particularly realized costs of complying with underwriting criteria or potential costs from legal liability are based on more qualitative information. Similarly, estimates of any changes in burden on consumers resulting from increased or decreased documentation requirements are based on qualitative information.

In the Extension Proposal, the Bureau set forth a preliminary analysis of these effects and requested comments and submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposal. The Bureau received several comments on its analysis. Several commenters agreed with the Bureau's estimates of the baseline effects of the Temporary GSE QM loan definition's expiration, and the potential benefits to covered persons and consumers under the Extension Proposal. Two consumer advocate commenters that submitted a joint comment letter argued for a more complete analysis of alternatives, including an indefinite delay of the scheduled expiration of the Temporary GSE QM loan definition as well as a comparison of shorter or longer delays of the expiration.

The Bureau notes that the potential benefits and costs to covered persons and consumers discussed in the Extension Proposal were estimated for the duration of the Temporary GSE QM loan definition, and thus encompass the possibilities of shorter, longer, or indefinite delays of expiration. In addition, these commenters argued that because the mortgage finance market is in flux, the Bureau should redo its analysis of benefits and costs when more data are available. In the Extension Proposal, the Bureau acknowledged the important economic disruptions and mortgage market changes due to the COVID-19 pandemic. However, the Bureau did not receive

new data from commenters to inform its analysis and it does not anticipate that market changes or other circumstances will significantly alter its estimates of the benefits and costs of this final rule. These commenters also stated that the Bureau must fulfill its statutory obligation “to study ability-to-repay” before amending the ATR/QM Rule. However, the Bureau has already done so by completing the Assessment Report and through its monitoring of the performance of mortgage loans and the availability of mortgage credit.

## *2. Description of the baseline*

The Bureau considers the benefits, costs, and impacts of this final rule against the baseline in which the Bureau takes no action and the Temporary GSE QM loan definition expires on January 10, 2021, or when the GSEs exit conservatorship, whichever occurs first. Under this final rule, the Temporary GSE QM loan definition will expire when the GSEs exit conservatorship or on the mandatory compliance date of a final rule issued by the Bureau amending the General QM loan definition, whichever occurs first. As a result, this final rule’s direct market impacts will occur only if the GSEs remain in conservatorship beyond January 10, 2021. The impact analyses assume the GSEs will remain in conservatorship for the relevant period of time. Unless described otherwise, estimates of loan counts under the baseline and estimates of the benefits and costs of this final rule relative to the baseline are annual estimates for the duration of the Temporary GSE QM loan definition.

Under the baseline, when the Temporary GSE QM loan definition expires, conventional loans could only receive QM status under the Bureau’s rules by underwriting according to the General QM requirements, Small Creditor QM requirements, Balloon Payment QM requirements, or the expanded portfolio QM amendments created by the EGRRCPA. The General QM loan definition, which would be the only type of QM available to larger creditors

following the expiration of the Temporary GSE QM loan definition, requires that consumers' DTI ratio not exceed 43 percent and requires creditors to determine debt and income in accordance with the standards in appendix Q of Regulation Z.

As stated above in part V.C, the Bureau anticipates that, under the baseline in which the Temporary GSE QM loan definition expires, there are two main types of conventional loans that would be affected: High-DTI GSE loans (those with DTI ratios above 43 percent) and GSE-eligible loans without appendix Q-required documentation. Leaving the current fixed sunset date in place would affect these loans because they are currently originated as QM loans due to the Temporary GSE QM loan definition but would not be originated as General QM loans, and may not be originated at all, if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. This section 1022 analysis refers to these loans as potentially displaced loans.

The Extension Proposal's analysis of the potential market impact of the Temporary GSE QM loan definition's expiration cited data and analysis from the Bureau's ANPR, as described below. None of the comments on the Extension Proposal challenged the data or analysis from the ANPR or the Extension Proposal related to the potential market impacts of the Temporary GSE QM loan definition's expiration.<sup>145</sup> The Bureau concludes that the data and analysis in the Extension Proposal and ANPR provide an appropriate estimate of the potential impact of the Temporary GSE QM loan definition's expiration for this final rule.

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<sup>145</sup> As noted above in part VII.A.1, two consumer advocate commenters that submitted a joint comment letter argued for a more complete analysis of reasonable alternatives and that the Bureau should redo its analysis of benefits and costs when more data is available. However, these commenters did not challenge the Bureau's estimates of the potential market impacts of the Temporary GSE QM loan definition's expiration.

*High-DTI GSE Loans.* The ANPR provided an estimate of the number of loans potentially affected by the expiration of the Temporary GSE QM loan definition.<sup>146</sup> In providing the estimate, the ANPR focused on loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition because they have a DTI ratio above 43 percent. This final rule refers to these loans as High-DTI GSE loans. Based on NMDB data, the Bureau estimated that there were approximately 6.01 million closed-end first-lien residential mortgage originations in the United States in 2018.<sup>147</sup> Based on supplemental data provided by FHFA, the Bureau estimated that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—of those loans.<sup>148</sup> Of those 3.12 million loans, the Bureau estimated that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.<sup>149</sup> Thus, the Bureau estimated that as a result of the General QM loan definition’s 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—were High-DTI GSE loans.<sup>150</sup> This estimate does not include Temporary GSE QM loans that were eligible for purchase by the GSEs but were not sold to the GSEs.

*Loans Without Appendix Q-Required Documentation That Are Otherwise GSE-Eligible.*

In addition to High-DTI GSE loans, the Bureau noted that an additional, smaller number of Temporary GSE QM loans with DTI ratios of 43 percent or less when calculated using GSE

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<sup>146</sup> 84 FR 37155, 37158-59 (July 31, 2019).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 37159.

<sup>149</sup> *Id.* The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinance loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

<sup>150</sup> *Id.*

underwriting guidelines would not fall within the General QM loan definition because their method of documenting and verifying income or debt is incompatible with appendix Q.<sup>151</sup> These loans would also likely be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. As explained in the Extension Proposal, the Bureau understands, from extensive public feedback and its own experience, that appendix Q does not specifically address whether and how to document and include certain forms of income. The Bureau understands these concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams.<sup>152</sup> As a result, these consumers' access to credit may be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect.

The Bureau's analysis of the market under the baseline focuses on High-DTI GSE loans because the Bureau estimates that most potentially displaced loans are High-DTI GSE loans. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the other General QM loan requirements and are not High-DTI GSE loans. However, the Assessment Report did not find evidence of substantial numbers of loans in the non-GSE-eligible jumbo market being

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<sup>151</sup> *Id.* at 37159 n.58. Where these types of loans have DTI ratios above 43 percent, they would be captured in the estimate above relating to High-DTI GSE loans.

<sup>152</sup> For example, in qualitative responses to the Bureau's Lender Survey conducted as part of the Assessment Report, underwriting for self-employed consumers was one of the most frequently reported sources of difficulty in originating mortgages using appendix Q. These concerns were also raised in comments submitted in response to the Assessment RFI, noting that appendix Q is ambiguous with respect to how to treat income for consumers who are self-employed, have irregular income, or want to use asset depletion as income. See Assessment Report, *supra* note 27, at 200.

displaced when appendix Q documentation requirements became effective in 2014.<sup>153</sup> Further, the Assessment Report found evidence of only a limited reduction in the approval rate of self-employed applicants for non-GSE eligible mortgages.<sup>154</sup> Based on this evidence, along with qualitative comparisons of GSE and appendix Q documentation requirements and available data on the prevalence of borrowers with non-traditional or difficult-to-document income (e.g., self-employed borrowers, retired borrowers, those with irregular income streams), the Bureau estimates this second category of potentially displaced loans is considerably less numerous than the category of High-DTI GSE loans. Nevertheless, the Bureau believes that, for some borrowers, there would be a meaningful impact on their access to credit because their method of documenting and verifying income or debt is incompatible with appendix Q.

*Additional Effects on Loans Not Displaced.* The Extension Proposal explained that, while the most significant market effects under the baseline are displaced loans, loans that continue to be originated as QM loans after the expiration of the Temporary GSE QM loan definition would also be affected. After the sunset date, absent changes to the General QM loan definition, all loans with DTI ratios at or below 43 percent that are or would have been purchased and guaranteed as GSE loans under the Temporary GSE QM loan definition—approximately 2.16 million loans in 2018—and that continue to be originated as General QM loans after the provision expires would be required to verify income and debts according to appendix Q, rather

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<sup>153</sup> *Id.* at 107 (“For context, total jumbo purchase originations increased from an estimated 108,700 to 130,200 between 2013 and 2014, based on nationally representative NMDB data.”).

<sup>154</sup> *Id.* at 118 (“The Application Data indicates that, notwithstanding concerns that have been expressed about the challenge of documenting and verifying income for self-employed borrowers under the General QM standard and the documentation requirements contained in appendix Q to the Rule, approval rates for non-High DTI, non-GSE eligible self-employed borrowers have decreased only slightly, by two percentage points.”).

than only according to GSE guidelines. Given the concerns raised about appendix Q’s ambiguity and lack of flexibility, this would likely entail both increased documentation burden for some consumers as well as increased costs or time-to-origination for creditors on some loans.<sup>155</sup>

#### *B. Benefits and Costs to Covered Persons and Consumers*

##### *1. Benefits to consumers*

The primary benefit to consumers of this final rule is the continued availability of High-DTI GSE loans during the period of the extension. Given the large number of consumers who obtain such loans rather than available alternatives, including loans from the private non-GSE market and FHA loans, these GSE loans may be preferred due to their pricing, underwriting requirements, or other features.

Under the baseline, a sizeable share of potentially displaced High-DTI GSE loans may instead be originated as FHA loans. Thus, under this final rule, any price advantage of GSE loans over FHA loans will be a realized benefit to consumers. Based on the Bureau’s analysis of 2018 HMDA data, FHA loans comparable to the loans received by High-DTI GSE borrowers, based on loan purpose, credit score, and combined LTV ratio, on average have \$3,000 to \$5,000 higher upfront total loan costs. APRs provide an alternative, annualized measure of costs over the life of a loan. FHA borrowers typically pay different APRs, which can be higher or lower than APRs for GSE loans depending on a borrower’s credit score and LTV. Borrowers with credit scores at or above 720 pay an APR 30 to 60 basis points higher than borrowers of comparable GSE loans, leading to higher monthly payments over the life of the loan. However, FHA borrowers with credit scores below 680 and combined LTVs exceeding 85 percent pay an

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<sup>155</sup> See part V.B for additional discussion of concerns raised about appendix Q.

APR 20 to 40 basis points lower than borrowers of comparable GSE loans, leading to lower monthly payments over the life of the loan.<sup>156</sup> For a loan size of \$250,000, these APR differences amount to \$2,800 to \$5,600 in additional total monthly payments over the first five years of mortgage payments for borrowers with credit scores above 720, and \$1,900 to \$3,800 in reduced total monthly payments over five years for borrowers with credit scores below 680 and LTVs exceeding 85 percent.<sup>157</sup> Thus all FHA borrowers are likely to pay higher costs at origination, while some pay higher monthly mortgage payments, and others pay lower monthly mortgage payments. Assuming, for comparison, that all 957,000 High-DTI GSE loans would be made as FHA loans in the absence of this final rule, the average of the upfront pricing estimates implies total savings for consumers of roughly \$4 billion per year on upfront costs while the Temporary GSE QM loan definition remains in effect.<sup>158</sup> While this comparison assumed all potentially displaced loans would be made as FHA loans, higher costs (either upfront or in monthly payments) are likely to prevent some borrowers from obtaining loans at all.

In the absence of this final rule, some of these potentially displaced consumers, particularly those with higher credit scores and the resources to make larger down payments, likely would be able to obtain credit in the non-GSE private market at a cost comparable or slightly higher than the costs for GSE loans, but below the cost of an FHA loan. As a result, the

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<sup>156</sup> The Bureau expects consumers could continue to obtain FHA loans where such loans were cheaper or preferred for other reasons.

<sup>157</sup> Based on NMDB data, the Bureau estimates that the average loan amount among High-DTI GSE borrowers in 2018 was \$250,000. While the time to repayment for mortgages varies with economic conditions, the Bureau estimates that half of mortgages are typically closed or paid off five to seven years into repayment. Payment comparisons based on typical 2018 HMDA APRs for GSE loans, 5 percent for borrowers with credit scores over 720, and 6 percent for borrowers with credit scores below 680 and LTVs exceeding 85 percent.

<sup>158</sup> This approximation assumes \$4,000 in savings from total loan costs for all 957,000 consumers. Actual expected savings would vary substantially based on loan and credit characteristics, consumer choices, and market conditions.

above cost comparisons between GSE and FHA loans provide an estimated upper bound on pricing benefits to consumers of this final rule. However, under the baseline, some potentially displaced consumers may not obtain loans and thus will experience benefits of credit access under this final rule.<sup>159</sup> As discussed above, the Assessment Report found that the January 2013 Final Rule eliminated between 63 and 70 percent of high-DTI home purchase loans that were not Temporary GSE QM loans.<sup>160</sup>

This final rule will also benefit those consumers with incomes difficult to document using appendix Q to obtain General QM status, as the Temporary GSE QM loan definition continues to allow documentation of income and debt through GSE standards. The greater flexibility of GSE documentation standards likely reduces effort and costs for these consumers under this final rule, and in the most difficult cases in which borrowers' documentation cannot satisfy appendix Q, this final rule will allow consumers to receive Temporary GSE QM loans rather than potential FHA or non-QM alternatives. These consumers will likely benefit from cost savings under this final rule, similar to those for High-DTI consumers discussed above.

## *2. Benefits to covered persons*

This final rule's primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating High-DTI conventional QM loans. Under the baseline, creditors would be unable to originate such loans under the Temporary GSE QM loan definition

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<sup>159</sup> In particular, the Assessment Report concluded that some borrowers with strong credit characteristics may no longer be able to obtain conventional QM loans, despite likely possessing the ability to repay such loans. Assessment Report, *supra* note 27, at 150 ("Together, these findings suggest that the observed decrease in access to credit in this segment was likely driven by lenders' desire to avoid the risk of litigation by consumers asserting a violation of the ATR requirement or other risks associated with that requirement, rather than by rejections of borrowers who were unlikely to repay the loan.").

<sup>160</sup> See *id.* at 10-11, 117, 131-47.

after January 10, 2021 and would instead have to originate loans with comparable DTI ratios as FHA, Small Creditor QM, or non-QM loans, or originate at lower DTI ratios as conventional General QM loans. Creditors' current preference for originating large numbers of High-DTI Temporary GSE QM loans 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—including Temporary GSE 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, this final rule conveys benefits to mortgage creditors originating Temporary GSE QM loans on each of these dimensions.

In addition, for those lower-DTI GSE loans which could satisfy General QM requirements, creditors may realize cost savings from continuing to underwrite loans using only the more flexible GSE documentation standards as compared to the appendix Q underwriting standards required for General QM loans. For GSE consumers unable to provide documentation compatible with appendix Q, this final rule allows such loans to continue receiving QM status, providing comparable benefits to creditors as described for High-DTI GSE loans above.

Finally, those creditors whose business models rely most heavily on originating High-DTI GSE loans will likely see a competitive benefit from the continued ability to originate such loans as Temporary GSE QM loans. This is effectively a transfer in market share to these creditors from those who primarily originate FHA or private non-GSE loans, who likely would have gained market share after the expiration of the Temporary GSE QM loan definition.

### *3. Costs to consumers*

The extension of the Temporary GSE QM loan definition could delay the development of the non-QM market, particularly new mortgage products which may have become available if the Temporary GSE QM loan definition had been allowed to expire. To the extent that some consumers would prefer some of these products to GSE loans due to pricing, documentation flexibility, or other advantages, the delay of their development will be a cost to consumers of this final rule.

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

### *4. Costs to covered persons*

This final rule's most sizable costs to covered persons are effectively transfers between lenders for the duration of the extension, reflecting reduced loan origination volume for lenders who primarily originate FHA or private non-GSE loans and increased origination volume for lenders who primarily originate GSE loans. Business models vary substantially within market segments, with portfolio lenders and lenders originating non-QM loans most likely to experience a delay in market share gains that would have been possible if the Temporary GSE QM loan definition had been allowed to expire, while GSE-focused bank and non-bank lenders are likely to maintain market share that might be lost sooner in the absence of this final rule.

### *5. Other benefits and costs*

In delaying the Temporary GSE QM loan definition's expiration, this final rule will 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 General QM loan definition represent a potential new market for private securitizations. Thus, this final rule will reduce the scope of the potential non-QM market for the duration of the extension, likely lowering profits and revenues for participants in the private secondary market. This will effectively be a transfer from these private secondary market participants to participants in the agency secondary market.

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

This final rule'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 on non-depository creditors. As discussed in part VII.B.4 (Costs to Covered Persons), depository creditors originating portfolio loans may experience a delay in potential market share gains that would occur in the absence of this final rule. In addition, those smaller creditors originating portfolio loans can originate High-DTI Small Creditor QM loans under the rule, and thus may rely less on the Temporary GSE QM loan definition for originating High-DTI loans. If the expiration of the Temporary GSE QM loan definition would confer a competitive advantage to these small creditors in their origination of High-DTI loans, this final rule will delay this outcome.

Conversely, those small creditors that primarily rely on the GSEs as a secondary market outlet because they do not have the capacity to hold numerous loans in portfolio or the infrastructure or scale to securitize loans may continue to benefit from the ability to make High-DTI GSE loans as Temporary GSE QM loans. In the absence of this final rule, these creditors would be limited to originating GSE loans as QMs only with DTI at or below 43 percent under the General QM loan definition. These creditors may also originate FHA, VA, or USDA loans

or non-QM loans for private securitizations, likely at a higher cost relative to Temporary GSE QM loans.

#### *Impact on Rural Areas*

This final rule’s expected impact on rural areas is similar to the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that High-DTI conventional purchase mortgages are comparably likely to be reported as initially sold to the GSEs in rural areas (52.5 percent) as in non-rural areas (52.0 percent).<sup>161</sup>

### **VIII. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 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.<sup>162</sup> 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>163</sup>

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

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<sup>161</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. In addition, a higher share of High-DTI conventional purchase non-rural loans (33.3 percent) report being sold to other non-GSE purchasers compared to rural loans (22.3 percent).

<sup>162</sup> 5 U.S.C. 601 *et seq.*

<sup>163</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).

significant economic impact on a substantial number of small entities.<sup>164</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>165</sup>

In the Extension Proposal, the Bureau certified that an IRFA was not required because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau did not receive comments on its analysis of the impact of the Extension Proposal on small entities. The Bureau does not expect this final rule to impose costs on small entities relative to the baseline. Under the baseline, the Temporary GSE QM loan definition expires, and therefore no creditor—including small entities—would be able to originate QM loans under that definition. Under this final rule, certain small entities that would otherwise not be able to originate QM loans under that definition will be able to originate such loans with QM status. Thus, the Bureau anticipates that this final rule will only reduce the burden on small entities relative to the baseline.

Accordingly, the Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, a FRFA is not required for this final rule.

## **IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>166</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

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<sup>164</sup> 5 U.S.C. 603 through 605.

<sup>165</sup> 5 U.S.C. 609.

<sup>166</sup> 44 U.S.C. 3501 *et seq.*

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 Bureau has determined that this final rule 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. This final rule will 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.

## **X. Congressional Review Act**

Pursuant to the Congressional Review Act,<sup>167</sup> the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this rule as a “major rule” as defined by 5 U.S.C. 804(2).

## **XI. Signing Authority**

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

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<sup>167</sup> 5 U.S.C. 801 *et seq.*

## **List of Subjects in 12 CFR Part 1026**

Advertising, Banking, Banks, 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 above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

## **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.*

### **Subpart E—Special Rules for Certain Home Mortgage Transactions**

2. Amend § 1026.43 by revising paragraph (e)(4)(iii)(B) to read as follows:

#### **§ 1026.43 Minimum standards for transactions secured by a dwelling.**

\* \* \* \*

(e) \* \* \*

(4) \* \* \*

(iii) \* \* \*

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

\* \* \* \*

3. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.43*—

*Minimum Standards for Transactions Secured by a Dwelling*, revise *43(e)(4) Qualified mortgage defined—special rules* to read as follows:

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

\* \* \* \*

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

\* \* \* \*

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

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

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

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

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

- i. That are consummated on or before the date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617); and
- ii. That are transactions for which the creditor receives the consumer's application before the mandatory compliance date of a final rule issued by the Bureau amending § 1026.43(e)(2), as provided by § 1026.43(e)(4)(iii). The Bureau will also amend this commentary prior to that mandatory compliance date to reflect the new status.

*4. Application.* Under § 1026.43(e)(4)(iii)(B), the special rules in § 1026.43(e)(4)—unless they are otherwise expired under § 1026.43(e)(4)(iii)(A)—are available only for covered

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

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

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

Matters wholly unrelated to ability to repay are those matters that are wholly unrelated to credit risk or the underwriting of the loan. Such matters include requirements related to the status of the creditor rather than the loan, requirements related to selling, securitizing, or delivering the loan, and any requirement that the creditor must perform after the consummated loan is sold, guaranteed, or endorsed for insurance such as document custody, quality control, or servicing.

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

- i. The loan conforms to the relevant standards set forth in the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single-Family Seller/Servicer Guide in effect at the time, or to standards set forth in a written agreement between the creditor or a sponsor or aggregator of the creditor and Fannie Mae or Freddie Mac in effect at that time that permits variation from the standards of those guides;
- ii. The loan has been granted an individual waiver by a GSE, which will allow purchase or guarantee in spite of variations from the applicable standards; or
- iii. The creditor inputs accurate information into the Fannie Mae or Freddie Mac AUS or another AUS pursuant to a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the GSE AUS; the loan receives one of the recommendations specified below in paragraphs A or B from the corresponding GSE AUS or an equivalent recommendation pursuant to another AUS as authorized in the written agreement; and the creditor satisfies any requirements and conditions specified by the relevant AUS that are not wholly unrelated to ability to repay, the non-satisfaction of which would invalidate that recommendation:
  - A. An “Approve/Eligible” recommendation from Desktop Underwriter (DU); or
  - B. A risk class of “Accept” and purchase eligibility of “Freddie Mac Eligible” from Loan Prospector (LP).

*6. Repurchase and indemnification demands.* A repurchase or indemnification demand by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS is not dispositive of qualified mortgage status. Qualified mortgage status under § 1026.43(e)(4) depends on whether a loan is eligible to be purchased, guaranteed, or insured at the time of consummation, provided that other requirements under § 1026.43(e)(4) are satisfied. Some repurchase or indemnification demands

are not related to eligibility criteria at consummation. *See* comment 43(e)(4)-4. Further, even where a repurchase or indemnification demand relates to whether the loan satisfied relevant eligibility requirements as of the time of consummation, the mere fact that a demand has been made, or even resolved, between a creditor and GSE or agency is not dispositive for purposes of § 1026.43(e)(4). However, evidence of whether a particular loan satisfied the § 1026.43(e)(4) eligibility criteria at consummation may be brought to light in the course of dealing over a particular demand, depending on the facts and circumstances. Accordingly, each loan should be evaluated by the creditor based on the facts and circumstances relating to the eligibility of that loan at the time of consummation. For example:

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

ii. Assume that a creditor delivered a loan, which the creditor determined was a qualified mortgage at the time of consummation under § 1026.43(e)(4), to Fannie Mae for inclusion in a particular To-Be-Announced Mortgage-Backed Security (MBS) pool of loans. The data submitted by the creditor at the time of loan delivery indicated that the various loan terms met

the product type, weighted-average coupon, weighted-average maturity, and other MBS pooling criteria, and MBS issuance disclosures to investors reflected this loan data. However, after delivery and MBS issuance, a quality control review determines that the loan violates the pooling criteria. The loan still meets eligibility requirements for Fannie Mae products and loan terms. Fannie Mae, however, requires the creditor to repurchase the loan due to the violation of MBS pooling requirements. Assume that the quality control review determination is accurate. Because the loan still meets Fannie Mae's eligibility requirements, it remains a qualified mortgage based on these facts and circumstances.

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**/s/ Laura Galban**

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**Laura Galban,**

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