



1700 G Street NW, Washington, DC 20552

January 6, 2021

## Unofficial Redline of the General QM and Seasoned QM Final Rules

On December 10, 2020, the Consumer Financial Protection Bureau (Bureau) issued the General QM Final Rule and Seasoned QM Final Rule. These final rules amend the qualified mortgage (QM) definitions in the Bureau's Ability-to-Repay/Qualified Mortgage Rule in Regulation Z. The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that these final rules make to Regulation Z's regulatory text and commentary.<sup>1</sup> The Bureau is releasing one redline for both final rules because they amend the same set of provisions in Regulation Z (specifically, 12 CFR 1026.43).

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation Z and its commentary. The changes that the General QM Final Rule and Seasoned QM Final Rule make to Regulation Z and its commentary are marked in **red**.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the final rules. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the final rules, the documents published in the *Federal Register* are the controlling documents. The redline includes asterisks to indicate where it omits text from current Regulation Z or its commentary that the General QM Final Rule and Seasoned QM Final Rule would not change.

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<sup>1</sup> This redline has been updated to include technical, non-substantive modifications made to the General QM Final Rule and Seasoned QM Final Rule when they were published in the *Federal Register*.

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

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

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

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

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

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(4) *Higher-priced covered transaction* means a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; by 3.5 or more percentage points for a first-lien covered transaction that is a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; or by 3.5 or more percentage points for a subordinate-lien covered transaction. For purposes of a qualified mortgage under paragraph (e)(2) of this section, for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, the creditor must determine the annual percentage rate for purposes of this paragraph (b)(4) by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

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(e) *Qualified mortgages—(1) Safe harbor and presumption of compliance—(i) Safe harbor for loans that are not higher-priced covered transactions and for seasoned loans.* A creditor or assignee of a qualified mortgage, ~~as defined in paragraphs (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, that is not a higher-priced covered transaction, as defined in paragraph (b)(4) of this section~~, complies with the repayment ability requirements of paragraph (c) of this section if:

(A) The loan is a qualified mortgage as defined in paragraph (e)(2), (4), (5), (6), or (f) of this section that is not a higher-priced covered transaction, as defined in paragraph (b)(4) of this section; or

(B) The loan is a qualified mortgage as defined in paragraph (e)(7) of this section, regardless of whether the loan is a higher-priced covered transaction.

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(2) *Qualified mortgage defined—general.* Except as provided in paragraph (e)(4), (e)(5), (e)(6), (7), or (f) of this section, a qualified mortgage is a covered transaction:

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

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

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

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

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

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

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

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

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

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

(2) The loan amount over the loan term;

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

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

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

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

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

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

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

(vi) For which the annual percentage rate does not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the amounts specified in paragraphs (e)(2)(vi)(A) through (F) of this section. The amounts specified here shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) that was reported on the preceding June 1. For purposes of this paragraph (e)(2)(vi), the creditor must determine the annual percentage rate for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

(A) For a first-lien covered transaction with a loan amount greater than or equal to \$110,260 (indexed for inflation), 2.25 or more percentage points;

(B) For a first-lien covered transaction with a loan amount greater than or equal to \$66,156 (indexed for inflation) but less than \$110,260 (indexed for inflation), 3.5 or more percentage points;

(C) For a first-lien covered transaction with a loan amount less than \$66,156 (indexed for inflation), 6.5 or more percentage points;

(D) For a first-lien covered transaction secured by a manufactured home with a loan amount less than \$110,260 (indexed for inflation), 6.5 or more percentage points;

(E) For a subordinate-lien covered transaction with a loan amount greater than or equal to \$66,156 (indexed for inflation), 3.5 or more percentage points;

(F) For a subordinate-lien covered transaction with a loan amount less than \$66,156 (indexed for inflation), 6.5 or more percentage points.

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

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

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

- (1) ~~The covered transaction, including the monthly payment for mortgage related obligations, in accordance with paragraph (e)(2)(iv) of this section; and~~
- (2) ~~Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with paragraphs (e)(2)(iv) and (e)(6) of this section.~~

\* \* \* \*

(4) *Qualified mortgage defined—special rules (i) General other agencies.*

Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction that is defined as a qualified mortgage by the U.S. Department of Housing and Urban Development under 24 CFR 201.7 and 24 CFR 203.19, the U.S. Department of Veterans Affairs under 38 CFR 36.4300 and 38 CFR 36.4500, or the U.S. Department of Agriculture under 7 CFR 3555.109, satisfies:

- (A) ~~The requirements of paragraphs (e)(2)(i) through (iii) of this section; and~~
- (B) ~~One or more of the criteria in paragraph (e)(4)(ii) of this section.~~

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

- (A) ~~A loan that is eligible, except with regard to matters wholly unrelated to ability to repay:~~
- (1) ~~To be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)); or~~
- (2) ~~To be purchased or guaranteed by any limited life regulatory entity succeeding the charter of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i));~~
- (B) ~~A loan that is eligible to be insured, except with regard to matters wholly unrelated to ability to repay, by the U.S. Department of Housing and Urban Development under the National Housing Act (12 U.S.C. 1707 et seq.);~~
- (C) ~~A loan that is eligible to be guaranteed, except with regard to matters wholly unrelated to ability to repay, by the U.S. Department of Veterans Affairs;~~
- (D) ~~A loan that is eligible to be guaranteed, except with regard to matters wholly unrelated to ability to repay, by the U.S. Department of Agriculture pursuant to 42 U.S.C. 1472(h); or~~
- (E) ~~A loan that is eligible to be insured, except with regard to matters wholly unrelated to ability to repay, by the Rural Housing Service.~~

~~(iii) Sunset of special rules. (A) Each respective special rule described in paragraph (e)(4)(ii)(B), (C), (D), or (E) of this section shall expire on the effective date of a rule issued by each respective agency pursuant to its authority under TILA section 129C(b)(3)(ii) to define a qualified mortgage.~~

~~(B) Unless otherwise expired under paragraph (e)(4)(ii)(A) of this section, the special rules in this paragraph (e)(4) are available only for covered transactions consummated on or before January 10, 2021.~~

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

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

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

(B) For which the creditor:

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

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

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

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

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

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

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

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

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

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

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(7) Qualified mortgage defined—seasoned loans—(i) General. Notwithstanding paragraph (e)(2) of this section, and except as provided in paragraph (e)(7)(iv) of this section, a qualified mortgage is a first-lien covered transaction that:

(A) Is a fixed-rate mortgage as defined in § 1026.18(s)(7)(iii) with fully amortizing payments as defined in paragraph (b)(2) of this section;

(B) Satisfies the requirements in paragraphs (e)(2)(i) through (v) of this section;

(C) Has met the requirements in paragraph (e)(7)(ii) of this section at the end of the seasoning period as defined in paragraph (e)(7)(iv)(C) of this section;

(D) Satisfies the requirements in paragraph (e)(7)(iii) of this section; and

(E) Is not a high-cost mortgage as defined in § 1026.32(a).

(ii) Performance requirements. To be a qualified mortgage under this paragraph (e)(7) of this section, the covered transaction must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period.

(iii) Portfolio requirements. To be a qualified mortgage under this paragraph (e)(7) of this section, the covered transaction must satisfy the following requirements:

(A) The covered transaction is not subject, at consummation, to a commitment to be acquired by another person, except for a sale, assignment, or transfer permitted by paragraph (e)(7)(iii)(B)(3) of this section; and

(B) Legal title to the covered transaction is not sold, assigned, or otherwise transferred to another person before the end of the seasoning period, except that:

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

(2) The covered transaction may be sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor; or

(3) The covered transaction may be sold, assigned, or otherwise transferred once before the end of the seasoning period, provided that the covered transaction is not securitized as part of the sale, assignment, or transfer or at any other time before the end of the seasoning period as defined in § 1026.43(e)(7)(iv)(C).

(iv) Definitions. For purposes of paragraph (e)(7) of this section:

(A) *Delinquency* means the failure to make a periodic payment (in one full payment or in two or more partial payments) sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle by the date the periodic payment is due under the terms of the legal obligation. Other amounts, such as any late fees, are not considered for this purpose.

(1) A periodic payment is 30 days delinquent when it is not paid before the due date of the following scheduled periodic payment.

(2) A periodic payment is 60 days delinquent if the consumer is more than 30 days delinquent on the first of two sequential scheduled periodic payments and does not make both sequential scheduled periodic payments before the due date of the next scheduled periodic payment after the two sequential scheduled periodic payments.

(3) For any given billing cycle for which a consumer's payment is less than the periodic payment due, a consumer is not delinquent as defined in this paragraph (e)(7) if:

(i) The servicer chooses not to treat the payment as delinquent for purposes of any section of subpart C of Regulation X, 12 CFR part 1024, if applicable;

(ii) The payment is deficient by \$50 or less; and

(iii) There are no more than three such deficient payments treated as not delinquent during the seasoning period.

(4) The principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation, except:

(i) If a qualifying change as defined in paragraph (e)(7)(iv)(B) of this section is made to the loan obligation, the principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation as modified by the qualifying change.

(ii) If, due to reasons related to the timing of delivery, set up, or availability for occupancy of the dwelling securing the obligation, the first payment due date is modified before the first payment due date in the legal obligation at consummation, the modified first payment due date shall be considered in lieu of the first payment due date in the legal obligation at

consummation in determining the date a periodic payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes due and unpaid.

(5) Except for purposes of making up the deficiency amount set forth in paragraph (e)(7)(iv)(A)(3)(ii) of this section, payments from the following sources are not considered in assessing delinquency under paragraph (e)(7)(iv)(A) of this section:

- (i) Funds in escrow in connection with the covered transaction; or
- (ii) Funds paid on behalf of the consumer by the creditor, servicer, or assignee of the covered transaction, or any other person acting on behalf of such creditor, servicer, or assignee.

(B) *Qualifying change* means an agreement that meets the following conditions:

(1) The agreement is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency as defined in paragraph (e)(7)(iv)(D) of this section and ends any pre-existing delinquency on the loan obligation upon taking effect;

(2) The amount of interest charged over the full term of the loan does not increase as a result of the agreement;

(3) The servicer does not charge any fee in connection with the agreement; and

(4) Promptly upon the consumer's acceptance of the agreement, the servicer waives all late charges, penalties, stop payment fees, or similar charges incurred during a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, as well as all late charges, penalties, stop payment fees, or similar charges incurred during the delinquency that led to a temporary payment accommodation in connection with a disaster or pandemic-related national emergency.

(C) *Seasoning period* means a period of 36 months beginning on the date on which the first periodic payment is due after consummation of the covered transaction, except that:

(1) Notwithstanding any other provision of this section, if there is a delinquency of 30 days or more at the end of the 36<sup>th</sup> month of the seasoning period, the seasoning period does not end until there is no delinquency; and

(2) The seasoning period does not include any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change as defined in paragraph (e)(7)(iv)(B) of this section or the consumer cures the loan's delinquency under its original terms. If during or at the end of the temporary payment accommodation in connection with a disaster or pandemic-related national emergency there is a qualifying change or the consumer cures the loan's delinquency under its original terms, the seasoning period consists of the period from the date on which the first periodic payment was due after consummation of the covered transaction to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months.

(D) Temporary payment accommodation in connection with a disaster or pandemic-related national emergency means temporary payment relief granted to a consumer due to financial hardship caused directly or indirectly by a presidentially declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or a presidentially declared pandemic-related national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.).

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

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

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

(ii) The creditor determines at or before consummation that the consumer can make all of the scheduled payments under the terms of the legal obligation, as described in paragraph (f)(1)(iv) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan;

(iii) The creditor:

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

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

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

(iv) The legal obligation provides for:

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

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

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

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

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

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

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

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

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

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

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## APPENDICES TO PART 1026

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

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## Supplement I to Part 1026—Official Interpretations

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

1. *Record retention.* See § 1026.25(c)(3) and comments 25(c)(3)-1 and -2 for guidance on the required retention of records as evidence of compliance with § 1026.43.

*2. General QM Amendments Effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Bureau's revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after [INSERT DATE 60 DAYS AFTER DATE OF*

PUBLICATION IN THE FEDERAL REGISTER] (effective date). Compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after July 1, 2021 (the mandatory compliance date). For a given transaction for which a creditor received an application on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] but prior to July 1, 2021, a person has the option of complying either: with 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on [INSERT DATE 59 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], together with any amendments to 12 CFR part 1026 that become effective after [INSERT DATE 59 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], other than the 2021 General QM Amendments. For transactions subject to § 1026.19(e), (f), or (g), creditors determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with § 1026.2(a)(3)(ii). For transactions that are not subject to § 1026.19(e), (f), or (g), creditors can determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with either § 1026.2(a)(3)(i) or (ii).

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

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

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

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

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

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

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

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

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

*4. Unidentified funds.* A creditor does not meet the requirements of § 1026.43(c)(4) if it observes an inflow of funds into the consumer's account without confirming that the funds are income. For example, a creditor would not meet the requirements of § 1026.43(c)(4) where it observes an unidentified \$5,000 deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income and not, for example, proceeds from the disbursement of a loan.

\* \* \* \*

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

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

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

*3. Compensating factors.* The creditor may consider factors in addition to the monthly debt-to-income ratio or residual income in assessing a consumer's repayment ability. For example, the creditor may reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio or lower residual income in light of the

consumer's assets other than the dwelling, including any real property attached to the dwelling, securing the covered transaction, such as a savings account. The creditor may also reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio in light of the consumer's residual income.

\* \* \* \*

*43(e)(1) Safe harbor and presumption of compliance.*

1. *General.* Section 1026.43(c) requires a creditor to make a reasonable and good faith determination at or before consummation that a consumer will be able to repay a covered transaction. Section 1026.43(e)(1)(i) and (ii) provide a safe harbor ~~and or~~ presumption of compliance, respectively, with the repayment ability requirements of § 1026.43(c) for creditors and assignees of covered transactions that satisfy the requirements of a qualified mortgage under § 1026.43(e)(2), ~~(e)(4), (5), (6), (7)~~, or (f). See § 1026.43(e)(1)(i) and (ii) and associated commentary.

*43(e)(1)(i)(A) Safe harbor for transactions that are not higher-priced covered transactions.*

1. *Safe Harbor Higher-priced covered transactions.* ~~To qualify for the safe harbor in § 1026.43(e)(1)(i), a covered transaction must meet the requirements of a qualified mortgage under § 1026.43(e)(2), (e)(4), or (f) and must not be a higher-priced covered transaction, as defined in § 1026.43(b)(4).~~ For guidance on determining whether a loan is a higher-priced covered transaction, see comments s 43(b)(4)-1 through -3.

\* \* \* \*

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

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

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

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

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

1. Consider. In order to comply with the requirement to consider under § 1026.43(e)(2)(v)(A), a creditor must take into account current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. A creditor must maintain written policies and procedures for how it takes into account, pursuant to its underwriting standards, income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. A creditor must also retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination, including how it applied its policies and procedures, in order to meet this requirement to consider and thereby meet the requirements for a qualified mortgage under § 1026.43(e)(2). This documentation may include, for example, an underwriter worksheet or a final automated underwriting system certification, in combination with the creditor's applicable underwriting standards and any applicable exceptions described in its policies and procedures, that show how these required factors were taken into account in the creditor's ability-to-repay determination.

2. Requirement to consider monthly debt-to-income ratio or residual income. Section 1026.43(e)(2)(v)(A) does not prescribe specifically how a creditor must consider monthly debt-to-income ratio or residual income. Section 1026.43(e)(2)(v)(A) also does not prescribe a particular monthly debt-to-income ratio or residual income threshold with which a creditor must comply. A creditor may, for example, consider monthly debt-to-income ratio or residual income by establishing monthly debt-to-income or residual income thresholds for its own underwriting standards and documenting how it applied those thresholds to determine the consumer's ability to repay. A creditor may also consider these factors by establishing monthly debt-to-income or residual income thresholds and exceptions to those thresholds based on other compensating factors, and documenting application of the thresholds along with any applicable exceptions.

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

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

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

reasonably reliable third-party records. So long as a creditor complies with the provisions of § 1026.43(c)(3) with respect to debt obligations, alimony, and child support and § 1026.43(c)(4) with respect to income and assets, the creditor is permitted to use any reasonable verification methods and criteria.

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

3. Safe harbor for compliance with specified external standards.

i. Meeting the standards in the following manuals for verifying current or reasonably expected income or assets using third-party records provides a creditor with reasonably reliable evidence of the consumer’s income or assets. Meeting the standards in the following manuals for verifying current debt obligations, alimony, and child support using third-party records provides a creditor with reasonably reliable evidence of the consumer’s debt obligations, alimony, and child support obligations. Accordingly, a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with verification standards in one or more of the following manuals:

A. Chapters B3-3 through B3-6 of the Fannie Mae Single Family Selling Guide, published June 3, 2020;

B. Sections 5102 through 5500 of the Freddie Mac Single-Family Seller/Servicer Guide, published June 10, 2020;

C. Sections II.A.1 and II.A.4-5 of the Federal Housing Administration’s Single Family Housing Policy Handbook, issued October 24, 2019;

D. Chapter 4 of the U.S. Department of Veterans Affairs’ Lenders Handbook, revised February 22, 2019;

E. Chapter 4 of the U.S. Department of Agriculture’s Field Office Handbook for the Direct Single Family Housing Program, revised March 15, 2019; and

F. Chapters 9 through 11 of the U.S. Department of Agriculture’s Handbook for the Single Family Guaranteed Loan Program, revised March 19, 2020.

ii. Applicable provisions in manuals. A creditor complies with § 1026.43(e)(2)(v)(B) if it complies with requirements in the manuals listed in comment 43(e)(2)(v)(B)-3 for creditors to verify income, assets, debt obligations, alimony and child support using specified reasonably reliable third party documents or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

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

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

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

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

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

2. Determination of applicable threshold. A creditor must determine the applicable threshold by determining which category the loan falls into based on the face amount of the note (the “loan amount” as defined in §1026.43(b)(5)). For example, for a first-lien covered transaction with a loan amount of \$75,000, the loan would fall into the tier for loans greater than or equal to \$66,156 (indexed for inflation) but less than \$110,260 (indexed for inflation), for which the applicable threshold is 3.5 or more percentage points.

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

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

i. In general. The commentary to § 1026.17(c)(1) and other provisions in subpart C address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in § 1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under § 1026.32(a)(1)(i). Section 1026.43(e)(2)(vi) requires, for the purposes of § 1026.43(e)(2)(vi), a different determination of the annual percentage rate for a qualified mortgage under § 1026.43(e)(2) for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. An identical special rule for determining the annual percentage rate for such a loan also applies for purposes of § 1026.43(b)(4).

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

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

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

*5. Meaning of a manufactured home.* For purposes of § 1026.43(e)(2)(vi)(D), manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development (HUD) establishing manufactured home construction and safety standards (24 CFR 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of § 1026.43(e)(2)(vi)(D).

*6. Scope of threshold for transactions secured by a manufactured home.* The threshold in § 1026.43(e)(2)(vi)(D) applies to first-lien covered transactions less than \$110,260 (indexed for inflation) that are secured by a manufactured home and land, or by a manufactured home only.

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

\* \* \* \*

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

*1. General.* The Department of Housing and Urban Development, Department of Veterans Affairs, and the Department of Agriculture have promulgated definitions for qualified mortgages under mortgage programs they insure, guarantee, or provide under applicable law. Cross-references to those definitions are listed in § 1026.43(e)(4) to acknowledge the covered transactions covered by those definitions are qualified mortgages for purposes of this section. *Alternative definition.* Subject to the sunset provided under § 1026.43(e)(4)(iii), § 1026.43(e)(4) provides an alternative definition of qualified mortgage to the definition provided in § 1026.43(e)(2). To be a qualified mortgage under § 1026.43(e)(4), the transaction must satisfy the requirements under § 1026.43(e)(2)(i) through (iii), in addition to being one of the types of loans specified in § 1026.43(e)(4)(ii)(A) through (E).

*2. Mortgages for which the creditor received the consumer's application prior to July 1, 2021.* Covered transactions that met the requirements of § 1026.43(e)(2)(i) thorough (iii). *Termination of conservatorship.* Section 1026.43(e)(4)(ii)(A) requires that a covered transaction be were eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), and for which the creditor received the consumer's application prior to the mandatory compliance date of July 1, 2021 continue to be qualified mortgages for the purposes of this section, including those covered transactions that were consummated on or after July 1, 2021. 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. Mortgages for which the creditor received the consumer's application on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and prior to July 1, 2021.* For a discussion of the optional early compliance period for the 2021 General QM Amendments, please see comment 43-2. *Timing.* Under § 1026.43(e)(4)(iii), the definition of qualified mortgage under paragraph (e)(4) applies only to loans consummated on or before January 10, 2021, regardless of whether Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) continues to operate under the conservatorship or receivership of the Federal Housing Finance Agency. Accordingly, § 1026.43(e)(4) is available only for covered transactions consummated on or before the earlier of either:

*i. The date Fannie Mae or Freddie Mac (or any limited life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617); or*

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

4. [RESERVED]. ~~Eligible for purchase, guarantee, or insurance except with regard to matters wholly unrelated to ability to repay. To satisfy § 1026.43(e)(4)(ii), a loan need not be actually purchased or guaranteed by Fannie Mae or Freddie Mac or insured or guaranteed by one of the Agencies (the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS)). Rather, § 1026.43(e)(4)(ii) requires only that the creditor determine that the loan is eligible (i.e., meets the criteria) for such purchase, guarantee, or insurance at consummation. For example, for purposes of § 1026.43(e)(4), a creditor is not required to sell a loan to Fannie Mae or Freddie Mac (or any limited life regulatory entity succeeding the charter of either) for that loan to be a qualified mortgage; however, the loan must be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (or any limited life regulatory entity succeeding the charter of either), including satisfying any requirements regarding consideration and verification of a consumer's income or assets, credit history, debt to income ratio or residual income, and other credit risk factors, but not any requirements regarding matters wholly unrelated to ability to repay. To determine eligibility for purchase, guarantee or insurance, a creditor may rely on a valid underwriting recommendation provided by a GSE automated underwriting system (AUS) or an AUS that relies on an Agency underwriting tool; compliance with the standards in the GSE or Agency written guide in effect at the time; a written agreement between the creditor or a direct sponsor or aggregator of the creditor and a GSE or Agency that permits variation from the standards of the written guides and/or variation from the AUSs, in effect at the time of consummation; or an individual loan waiver granted by the GSE or Agency to the creditor. For creditors relying on the variances of a sponsor or aggregator, a loan that is transferred directly to or through the sponsor or aggregator at or after consummation complies with § 1026.43(e)(4). In using any of the four methods listed above, the creditor need not satisfy standards that are wholly unrelated to assessing a consumer's ability to repay that the creditor is required to perform. Matters wholly unrelated to ability to repay are those matters that are wholly unrelated to credit risk or the underwriting of the loan. Such matters include requirements related to the status of the creditor rather than the loan, requirements related to selling, securitizing, or delivering the loan, and any requirement that the creditor must perform after the consummated loan is sold, guaranteed, or endorsed for insurance such as document custody, quality control, or servicing. Accordingly, a covered transaction is eligible for purchase or guarantee by Fannie Mae or Freddie Mac, for example, if:~~

- i. ~~The loan conforms to the relevant standards set forth in the Fannie Mae Single Family Selling Guide or the Freddie Mac Single Family Seller/Serviceer Guide in effect at the time, or to standards set forth in a written agreement between the creditor or a sponsor or aggregator of the creditor and Fannie Mae or Freddie Mac in effect at that time that permits variation from the standards of those guides;~~
- ii. ~~The loan has been granted an individual waiver by a GSE, which will allow purchase or guarantee in spite of variations from the applicable standards; or~~
- iii. ~~The creditor inputs accurate information into the Fannie Mae or Freddie Mac AUS or another AUS pursuant to a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the GSE AUS; the loan receives one of the recommendations specified below in paragraphs A or B from the corresponding GSE AUS or an equivalent recommendation pursuant to another AUS as authorized in the written agreement; and the creditor satisfies any requirements and conditions specified by the relevant AUS that are not~~

~~wholly unrelated to ability to repay, the non satisfaction of which would invalidate that recommendation:~~

~~A. An “Approve/Eligible” recommendation from Desktop Underwriter (DU); or~~

~~B. A risk class of “Accept” and purchase eligibility of “Freddie Mac Eligible” from Loan Prospector (LP).~~

~~5. [RESERVED]. Repurchase and indemnification demands. A repurchase or indemnification demand by Fannie Mae, Freddie Mae, HUD, VA, USDA, or RHS is not dispositive of qualified mortgage status. Qualified mortgage status under § 1026.43(e)(4) depends on whether a loan is eligible to be purchased, guaranteed, or insured at the time of consummation, provided that other requirements under § 1026.43(e)(4) are satisfied. Some repurchase or indemnification demands are not related to eligibility criteria at consummation. See comment 43(e)(4)-4. Further, even where a repurchase or indemnification demand relates to whether the loan satisfied relevant eligibility requirements as of the time of consummation, the mere fact that a demand has been made, or even resolved, between a creditor and GSE or agency is not dispositive for purposes of § 1026.43(e)(4). However, evidence of whether a particular loan satisfied the § 1026.43(e)(4) eligibility criteria at consummation may be brought to light in the course of dealing over a particular demand, depending on the facts and circumstances. Accordingly, each loan should be evaluated by the creditor based on the facts and circumstances relating to the eligibility of that loan at the time of consummation. For example:~~

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

~~ii. Assume that a creditor delivered a loan, which the creditor determined was a qualified mortgage at the time of consummation under § 1026.43(e)(4), to Fannie Mae for inclusion in a particular To-Be-Announced Mortgage Backed Security (MBS) pool of loans. The data submitted by the creditor at the time of loan delivery indicated that the various loan terms met the product type, weighted average coupon, weighted average maturity, and other MBS pooling criteria, and MBS issuance disclosures to investors reflected this loan data. However, after delivery and MBS issuance, a quality control review determines that the loan violates the pooling criteria. The loan still meets eligibility requirements for Fannie Mae products and loan terms. Fannie Mae, however, requires the creditor to repurchase the loan due to the violation of MBS pooling requirements. Assume that the quality control review determination is accurate. Because the loan still meets Fannie Mae's eligibility requirements, it remains a qualified mortgage based on these facts and circumstances.~~

*Paragraph 43(e)(5).*

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

*2. Debt-to-income ratio or residual income.* Section 1026.43(e)(5) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, creditors must consider a consumer's debt-to-income ratio or residual income calculated generally in accordance with § 1026.43(c)(7) and verify the information used to calculate the debt-to-income ratio or residual income in accordance with § 1026.43(c)(3) and (4). However, § 1026.43(c)(7) refers creditors to § 1026.43(c)(5) for instructions on calculating the payment on the covered transaction. Section 1026.43(c)(5) requires creditors to calculate the payment differently than § 1026.43(e)(2)(iv). For purposes of the qualified mortgage definition in § 1026.43(e)(5), creditors must base their calculation of the consumer's debt-to-income ratio or residual income on the payment on the covered transaction calculated according to § 1026.43(e)(2)(iv) instead of according to § 1026.43(c)(5). ~~Creditors are not required to calculate the consumer's monthly debt to income ratio in accordance with appendix Q to this part as is required under the general definition of qualified mortgages by § 1026.43(e)(2)(vi).~~

\* \* \* \*

43(e)(7) Seasoned loans.

Paragraph 43(e)(7)(i)(A)

*1. Fixed-rate mortgage.* Section 1026.43(e)(7)(i)(A) provides that, for a covered transaction to become a qualified mortgage under § 1026.43(e)(7), the covered transaction must be a fixed-rate mortgage, as defined in § 1026.18(s)(7)(iii). Under § 1026.18(s)(7)(iii), the term "fixed-rate mortgage" means a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage. Thus, a covered transaction that is an adjustable-rate mortgage or step-rate mortgage is not eligible to become a qualified mortgage under § 1026.43(e)(7).

*2. Fully amortizing payments.* Section 1026.43(e)(7)(i)(A) provides that for a covered transaction to become a qualified mortgage as a seasoned loan under § 1026.43(e)(7), a mortgage must meet certain product requirements and be a fixed-rate mortgage with fully amortizing payments. Only loans for which the scheduled periodic payments do not require a balloon payment, as defined in § 1026.18(s), to fully amortize the loan within the loan term can become seasoned loans for the purposes of § 1026.43(e)(7). However, § 1026.43(e)(7)(i)(A) does not prohibit a qualifying change as defined in § 1026.43(e)(7)(iv)(B) that is entered into

during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, even if such a qualifying change involves a balloon payment or lengthened loan term.

Paragraph 43(e)(7)(iii)

1. Requirement to hold in portfolio. For a covered transaction to become a qualified mortgage under § 1026.43(e)(7), a creditor generally must hold the transaction in portfolio until the end of the seasoning period, subject to the exceptions set forth in § 1026.43(e)(7)(iii)(B)(1) through (3). Unless one of these exceptions applies, a covered transaction cannot become a qualified mortgage as a seasoned loan under § 1026.43(e)(7) if legal title to the debt obligation is sold, assigned, or otherwise transferred to another person before the end of the seasoning period.

2. Application to subsequent transferees. The exception contained in § 1026.43(e)(7)(iii)(B)(3) may be used only one time for a covered transaction. The exceptions contained in § 1026.43(e)(7)(iii)(B)(1) and (2) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a covered transaction that is not a qualified mortgage at origination. Six months after consummation, the covered transaction is transferred to Creditor B pursuant to § 1026.43(e)(7)(iii)(B)(3). The transfer does not fail to comply with the requirements in § 1026.43(e)(7)(iii) because the loan is not securitized as part of the transfer or at any other time before the end of the seasoning period. If Creditor B sells the covered transaction before the end of the seasoning period, the covered transaction is not eligible to season into a qualified mortgage under § 1026.43(e)(7) unless the sale falls within an exception set forth in § 1026.43(e)(7)(iii)(B)(1) or (2) (i.e., the transfer is required by supervisory action or pursuant to a merger or acquisition).

3. Supervisory sales. Section 1026.43(e)(7)(iii)(B)(1) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A covered transaction does not violate the requirements in § 1026.43(e)(7)(iii) if it is sold, assigned, or otherwise transferred to another person before the end of the seasoning period pursuant to: a capital restoration plan or other action under 12 U.S.C. 1831o; the actions or instructions of any person acting as conservator, receiver or bankruptcy trustee; an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or an agreement between the creditor and such an agency. Section 1026.43(e)(7)(iii)(B)(1) does not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in § 1026.43(e)(7)(iii)(B)(1) directing the sale of one or more covered transactions held by the creditor or one of the other circumstances listed in § 1026.43(e)(7)(iii)(B)(1). For example, a covered transaction does not violate the requirements in § 1026.43(e)(7)(iii) if the covered transaction is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o before the end of seasoning period. However, if the creditor simply chose to sell the same covered transaction as one way to comply with general regulatory capital requirements in the absence of supervisory action or agreement, then the covered transaction cannot become a qualified mortgage as a seasoned loan under § 1026.43(e)(7), unless the sale met the requirements of

§ 1026.43(e)(7)(iii)(B)(3) or the covered transaction qualifies under another definition of qualified mortgage.

Paragraph 43(e)(7)(iv)(A)

1. Due date. In determining whether a scheduled periodic payment is delinquent for purposes of § 1026.43(e)(7), the due date is the date the payment is due under the terms of the legal obligation, without regard to whether the consumer is afforded a period after the due date to pay before the servicer assesses a late fee.

Paragraph 43(e)(7)(iv)(A)(2)

1. 60 days delinquent. The following example illustrates the meaning of 60 days delinquent for purposes of § 1026.43(e)(7). Assume a loan is consummated on October 15, 2022, that the consumer's periodic payment is due on the 1st of each month, and that the consumer timely made the first periodic payment due on December 1, 2022. For purposes of § 1026.43(e)(7), the consumer is 30 days delinquent if the consumer fails to make a payment (sufficient to cover the scheduled January 1, 2023 periodic payment of principal, interest, and escrow (if applicable)) before February 1, 2023. For purposes of § 1026.43(e)(7), the consumer is 60 days delinquent if the consumer then fails to make two payments (sufficient to cover the scheduled January 1, 2023 and February 1, 2023 periodic payments of principal, interest, and escrow (if applicable)) before March 1, 2023.

Paragraph 43(e)(7)(iv)(B)

1. Qualifying change. An agreement that meets the conditions specified in § 1026.43(e)(7)(iv)(B) is a qualifying change even if it is not in writing.

Paragraph 43(e)(7)(iv)(C)(2)

1. Suspension of seasoning period during certain temporary payment accommodations. Section 1026.43(e)(7)(iv)(C)(2) provides that the seasoning period does not include any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change as defined in § 1026.43(e)(7)(iv)(B) or the consumer cures the loan's delinquency under its original terms. Section 1026.43(e)(7)(iv)(C)(2) further explains that, under these circumstances, the seasoning period consists of the period from the date on which the first periodic payment was due after origination of the covered transaction to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months. For example, assume the consumer enters into a covered transaction for which the first periodic payment is due on March 1, 2022, and the consumer enters a three-month temporary payment accommodation in connection with a disaster or pandemic-related national emergency, effective March 1, 2023. Assume further that the consumer misses the March 1, April 1, and May 1, 2023 periodic payments during the temporary payment accommodation period, but enters into a qualifying change as defined in § 1026.43(e)(7)(iv)(B) on June 1, 2023, and is not delinquent on June 1, 2023. Under these circumstances, the seasoning period consists of the period from March 1,

2022 to February 28, 2023 and the period from June 1, 2023 to May 31, 2025, assuming the consumer is not 30 days or more delinquent on May 31, 2025.

Paragraph 43(e)(7)(iv)(D)

1. Temporary payment accommodation in connection with a disaster or pandemic-related national emergency. For purposes of § 1026.43(e)(7), examples of temporary payment accommodations in connection with a disaster or pandemic-related national emergency include, but are not limited to a trial loan modification plan, a temporary payment forbearance program, or a temporary repayment plan.

*43(f) Balloon-Payment qualified mortgages made by certain creditors.*

*43(f)(1) Exemption.*

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

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

\* \* \* \*

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

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