

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2021-0003]

RIN 3170-AA98

Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General

QM Loan Definition; Delay of Mandatory Compliance Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to delay until October 1, 2022 the mandatory compliance date for the final rule titled Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition (General QM Final Rule). The Bureau is taking this action to help ensure access to responsible, affordable mortgage credit and to preserve flexibility for consumers affected by the COVID-19 pandemic and its economic effects.

DATES: This final rule is effective on June 30, 2021.

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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 qualified mortgages (QMs) obtain certain protections from liability. The ATR/QM Rule defines several categories of QMs.

One QM category defined in the ATR/QM Rule is the General QM category. General QMs must comply with the ATR/QM Rule’s prohibitions on certain loan features, points-and-fees limits, and underwriting requirements. Under the original ATR/QM Rule, the ratio of the consumer’s total monthly debt to total monthly income (DTI or DTI ratio) could not exceed 43 percent for a loan to meet the General QM loan definition (original, DTI-based General QM loan definition).¹ In December 2020, the Bureau issued the General QM Final Rule, which amended Regulation Z by replacing the original, DTI-based General QM loan definition with a limit based on loan pricing and by making other changes to the General QM loan definition (revised, price-based General QM loan definition).² The General QM Final Rule took effect on March 1, 2021, and it provided a mandatory compliance date of July 1, 2021. Under the General QM Final Rule, as issued in December 2020, for covered transactions for which creditors receive an application on or after the March 1, 2021 effective date but prior to the July 1, 2021 mandatory compliance date, creditors had the option of complying with either the original, DTI-based General QM loan definition or the revised, price-based General QM loan definition. Only the revised, price-based General QM loan definition would have been available for applications received on or after the July 1, 2021 mandatory compliance date.

On March 3, 2021, the Bureau released for public comment a proposal to delay the General QM Final Rule’s mandatory compliance date from July 1, 2021 to October 1, 2022.

¹ 12 CFR 1026.43(e)(2)(vi), as was in effect on February 26, 2021.

² 85 FR 86308 (Dec. 29, 2020).

After considering the comments, the Bureau is issuing this final rule delaying the General QM Final Rule’s mandatory compliance date as proposed. Specifically, this final rule amends comments 43-2 and 43(e)(4)-2 and -3 to reflect a delay of the mandatory compliance date by changing the date “July 1, 2021” where it appears in those comments to “October 1, 2022.” The final rule also adds new comment 43(e)(2)-1 to clarify the General QM loan definitions available to creditors for applications received on or after March 1, 2021, but prior to October 1, 2022.

For covered transactions for which creditors receive an application on or after March 1, 2021, but prior to October 1, 2022, creditors will have the option of complying with either the original, DTI-based General QM loan definition or the revised, price-based General QM loan definition. Under the final rule, only the revised, price-based General QM loan definition will be available for applications received on or after the October 1, 2022 mandatory compliance date.

The ATR/QM Rule also defines a temporary category of QMs that is also affected by this final rule. That temporary category of QMs includes mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QMs and (2) are eligible to be purchased or guaranteed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government-sponsored enterprises or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). This 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. In October 2020, the Bureau issued a final rule stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer’s application before the mandatory compliance date of the General QM Final Rule.³

³ 85 FR 67938 (Oct. 26, 2020).

Under the General QM Final Rule, the Temporary GSE QM loan definition would have expired on the earlier of July 1, 2021 or the date the applicable GSE exits Federal conservatorship.

Under this final rule, the Temporary GSE QM loan definition will expire upon the earlier of October 1, 2022, or the date the applicable GSE exits Federal conservatorship.

As discussed below, this final rule delays the mandatory compliance date of the General QM Final Rule to help ensure access to responsible, affordable mortgage credit and to preserve flexibility for consumers affected by the COVID-19 pandemic and its economic effects. This final rule does not make any other changes to the General QM loan definition. The Bureau plans to evaluate the General QM Final Rule's amendments to the General QM loan definition and will consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM loan definition.

The effective date of this final rule is June 30, 2021.

II. Background

A. Dodd-Frank Act Amendments to the Truth in Lending Act and the General QM Loan Definition

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

⁴ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁵ 15 U.S.C. 1601 *et seq.*

⁶ Dodd-Frank Act sections 1411-12, 1414, 124 Stat. 1376, 2142-49; 15 U.S.C. 1639c.

documented information that the consumer has a reasonable ability to repay the loan.⁷ 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, DTI ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.⁸

A creditor may not be certain whether its ATR determination is reasonable in a particular case. TILA addresses this potential uncertainty by defining a category of loans—called QMs—for which a creditor “may presume that the loan has met” the ATR requirements.⁹ 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

⁷ 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).

⁸ 15 U.S.C. 1639c(a)(3).

⁹ 15 U.S.C. 1639c(b)(1).

- 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.¹⁰

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA's ATR requirements and define several categories of QM loans (January 2013 Final Rule).¹¹ This final rule refers to the January 2013 Final Rule and later amendments¹² to it collectively as the ATR/QM Rule or the Rule. One category of QMs defined by the ATR/QM Rule consists of General QMs. The January 2013 Final Rule provided that a loan was a General QM if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits;¹³
- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years;¹⁴
- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q;¹⁵ and
- The consumer's DTI ratio is no more than 43 percent, determined in accordance with appendix Q.¹⁶

¹⁰ 15 U.S.C. 1639c(b)(2)(A).

¹¹ 78 FR 6408 (Jan. 30, 2013).

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

¹³ 12 CFR 1026.43(e)(2)(i) through (iii).

¹⁴ 12 CFR 1026.43(e)(2)(iv).

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

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

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

As discussed above, another category of QMs defined by the January 2013 Final Rule, Temporary GSE QMs, consists of mortgages that (1) comply with the ATR/QM Rule's prohibitions on certain loan features and its limitations on points and fees¹⁸ and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of FHFA.¹⁹ Unlike for General QMs, the January 2013 Final Rule did not prescribe a DTI limit for Temporary GSE QMs nor did it require use of appendix Q to verify and calculate debt, income, and DTI ratios. The January 2013 Final Rule provided that the Temporary GSE QM loan definition would expire with respect to each GSE when that GSE ceases to operate under conservatorship or on January 10, 2021, whichever occurred first.²⁰

In 2020, the Bureau issued three final rules amending the ATR/QM Rule, two of which relate to this final rule.²¹ These two final rules are discussed below.

¹⁷ 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).

¹⁸ 12 CFR 1026.43(e)(2)(i) through (iii).

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

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

²¹ The third rule amending the ATR/QM Rule that the Bureau issued in 2020 was the Seasoned QM Final Rule. *See* 85 FR 86402 (Dec. 29, 2020).

1. The Patch Extension Final Rule

The Bureau issued the Patch Extension Final Rule on October 20, 2020. It was published in the *Federal Register* on October 26, 2020.²² The Patch Extension Final Rule amended Regulation Z to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z. The Patch Extension Final Rule did not amend the clause providing that the Temporary GSE QM loan definition expires on the date the applicable GSE exits Federal conservatorship. Therefore, under the Patch Extension Final Rule, the Temporary GSE QM loan definition will expire on the mandatory compliance date of final amendments to the General QM loan definition or the date the applicable GSE exits Federal conservatorship, whichever comes first.

2. The General QM Final Rule

The Bureau issued the General QM Final Rule on December 10, 2020. It was published in the *Federal Register* on December 29, 2020.²³ The General QM Final Rule amended Regulation Z to remove the General QM loan definition's DTI limit (and appendix Q) and replace it with limits based on the loan's pricing. Under the amended rule, a loan meets the General QM loan definition only if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than 2.25 percentage points as of the date the interest rate is set. The General QM Final Rule provided higher thresholds for loans with

²² 85 FR 67938 (Oct. 26, 2020).

²³ 85 FR 86308 (Dec. 29, 2020).

smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions. The General QM Final Rule requires the creditor to consider the consumer's DTI ratio or residual income and to consider and verify the consumer's income or assets other than the value of the dwelling and the consumer's debts. The General QM Final Rule also provides a safe harbor for compliance with this verification requirement if a creditor complies with verification standards in certain manuals listed in the rule.²⁴ The General QM Final Rule had an effective date of March 1, 2021, and a mandatory compliance date of July 1, 2021.

B. February 2021 Statement Regarding General QM and Seasoned QM Final Rules

On February 23, 2021, the Bureau issued a statement titled “Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule” (February 23, 2021 Statement or Statement).²⁵ The Statement was published in the *Federal Register* on February 26, 2021.²⁶ In it, the Bureau stated, in relevant part, that it expected to issue a proposal to delay the July 1, 2021 mandatory compliance date of the General QM Final Rule. The Bureau stated that it would consider at a later date whether to initiate another rulemaking to reconsider other aspects of the General QM loan definition. The Statement also indicated that the Bureau is considering whether to initiate a rulemaking to revisit another final rule that it issued in December 2020, the Seasoned QM Final Rule.²⁷

²⁴ See comment 43(e)(2)(v)(B)-3.i.

²⁵ Bureau of Consumer Fin. Prot., *Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule* (Feb. 23, 2021), https://www.consumerfinance.gov/documents/9505/cfpb_qm-statement_2021-02.pdf.

²⁶ 86 FR 11623 (Feb. 26, 2021).

²⁷ 85 FR 86402 (Dec. 29, 2020).

C. The General QM Mandatory Compliance Date Delay Proposal

On March 3, 2021, the Bureau released a proposal to delay the General QM Final Rule’s mandatory compliance date from July 1, 2021 to October 1, 2022 (the proposal). The proposal was published in the *Federal Register* on March 5, 2021.²⁸ In the proposal, the Bureau preliminarily concluded that delaying the mandatory compliance date to October 1, 2022 would help ensure access to responsible, affordable mortgage credit and preserve flexibility for consumers affected by the COVID-19 pandemic and its economic effects. The comment period for the proposal ended on April 5, 2021. The Bureau received 24 unique comments on the proposal. The Bureau summarizes and responds to these comments in part IV below.

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

As discussed above and in the proposal, the Bureau is delaying the General QM Final Rule’s mandatory compliance date to help those affected by the COVID-19 pandemic and its economic effects. The General QM Final Rule acknowledged that the COVID-19 pandemic has had a significant effect on the U.S. economy. In the early months of the pandemic, economic activity contracted, millions of workers became unemployed, and mortgage markets were affected. Although the unemployment rate has declined from a high of 14.8 percent in April 2020 to 6.0 percent in March 2021,²⁹ unemployment remains elevated relative to the pre-pandemic rate of 3.5 percent in February 2020, and the labor force participation rate remains below pre-pandemic levels, at 61.5 percent in March 2021 versus 63.3 percent in February 2020.

²⁸ 86 FR 12839 (Mar. 5, 2021).

²⁹ News Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, USDL-21-0582, *The Employment Situation* (Apr. 2, 2021), <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>, and <https://www.bls.gov/charts/employment-situation/civilian-labor-force-participation-rate.htm> (charts related to the Apr. 2, 2021 *The Employment Situation* news release).

The housing market has seen a significant rebound in mortgage-origination activity, buoyed by historically low interest rates and by an increasingly large share of GSE-backed loans. However, the share of origination activity outside the GSE-backed origination channel has declined from pre-pandemic levels, and mortgage-credit availability for many consumers—including those who would be dependent on the non-QM market for financing—remains tighter than prior to the pandemic.³⁰ The pandemic’s impact on both the secondary market for new originations and on the servicing of existing mortgages is described below.

1. Secondary Market Impacts and Implications for Mortgage Origination Markets

The early economic disruptions associated with the COVID-19 pandemic restricted the flow of credit in the U.S. economy, particularly as uncertainty rose in mid-March 2020, and investors moved rapidly towards cash and government securities.³¹ The lack of investor demand to purchase mortgages, combined with a large supply of agency mortgage-backed securities (MBS) entering the market,³² resulted in widening spreads between the rates on a 10-year Treasury note and mortgage interest rates.³³ 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

³⁰ Brandon Ivey, *Expanded-Credit Originations See Recovery in 4Q20*, Inside Mortg. Fin. (Mar. 12, 2021), <https://www.insidemortgagefinance.com/articles/220770-expanded-credit-mortgage-originations-slowly-recovering-from-shock>.

³¹ The Coronavirus Aid, Relief, and Economic Security Act, CARES Act: *Hearing on The Quarterly CARES Act Report to Congress Before the S. Comm. on Banking, Hous., & Urban Affairs*, 116th Cong. 2-3 (2020) (statement of Jerome H. Powell, Chairman, Bd. of Governors of the Fed. Reserve Sys.), <https://www.banking.senate.gov/imo/media/doc/Powell%20Testimony%205-19-20.pdf> (CARES Act Hearing).

³² Agency MBS are backed by loans guaranteed by Fannie Mae, Freddie Mac, and the Government National Mortgage Association (Ginnie Mae).

³³ Laurie Goodman *et al.*, Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Mar. 26, 2020), <https://www.urban.org/sites/default/files/publication/101926/housing-finance-at-a-glance-a-monthly-chartbook-march-2020.pdf> (*Housing Finance at a Glance*) (on file).

taken by the Board of Governors of the Federal Reserve System (Board) in March 2020 to purchase agency MBS “in the amounts needed to support smooth market functioning and effective transmission of monetary policy to broader financial conditions and the economy,”³⁴ market conditions improved substantially.³⁵ This helped to stabilize the MBS market and resulted in a decline in mortgage rates and a significant increase in refinance activity since the Board’s intervention.

Because non-agency MBS³⁶ are generally perceived by investors as riskier than agency MBS, the market for non-agency and non-QM mortgage credit significantly contracted in the early months of the pandemic. Issuance of non-agency MBS declined by 8.2 percent in the first quarter of 2020, with nearly all the transactions completed in January and February before the COVID-19 pandemic began to affect the economy significantly.³⁷ Nearly all major non-QM creditors ceased making loans in March and April 2020. The non-QM market has since been recovering, with strong investor demand for non-QM MBS due to better-than-expected performance during the pandemic.³⁸ Many non-QM creditors—which largely depend on the ability to sell loans in the secondary market in order to fund new loans—have resumed originations, although some continue to maintain tighter underwriting requirements compared to

³⁴ 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/news_events/pressreleases/monetary200323b.htm.

³⁵ CARES Act Hearing, *supra* note 30, at 3.

³⁶ 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.

³⁷ Brandon Ivey, *Non-Agency MBS Issuance Slowed in First Quarter*, Inside Mortg. Fin. (Apr. 3, 2020), <https://www.insidemortgagefinance.com/articles/217623-non-agency-mbs-issuance-slowed-in-first-quarter> (on file).

³⁸ Bandon Ivey, *Non-QM MBS Issuers Ready. But Where Are the Loans?*, Inside Mortg. Fin. (Jan. 29, 2021), <https://www.insidemortgagefinance.com/articles/220373-non-qm-originations-and-mbs-ready-to-rebound-after-the-refi-boom> (on file).

prior to the pandemic.³⁹ Other creditors that have typically specialized in non-QM financing have shifted their focus to GSE originations due to historically low interest rates and the relative speed and ease with which GSE loans can be originated. Nonetheless, many non-QM creditors and investors expect the non-agency market to continue to strengthen in 2021 and recover to its pre-pandemic levels of production.⁴⁰ Because many of these loans that were historically considered non-QM may qualify for QM status under the revised, price-based General QM loan definition, it is unclear how quickly the market for non-QM loans that fall outside of existing QM definitions will develop.

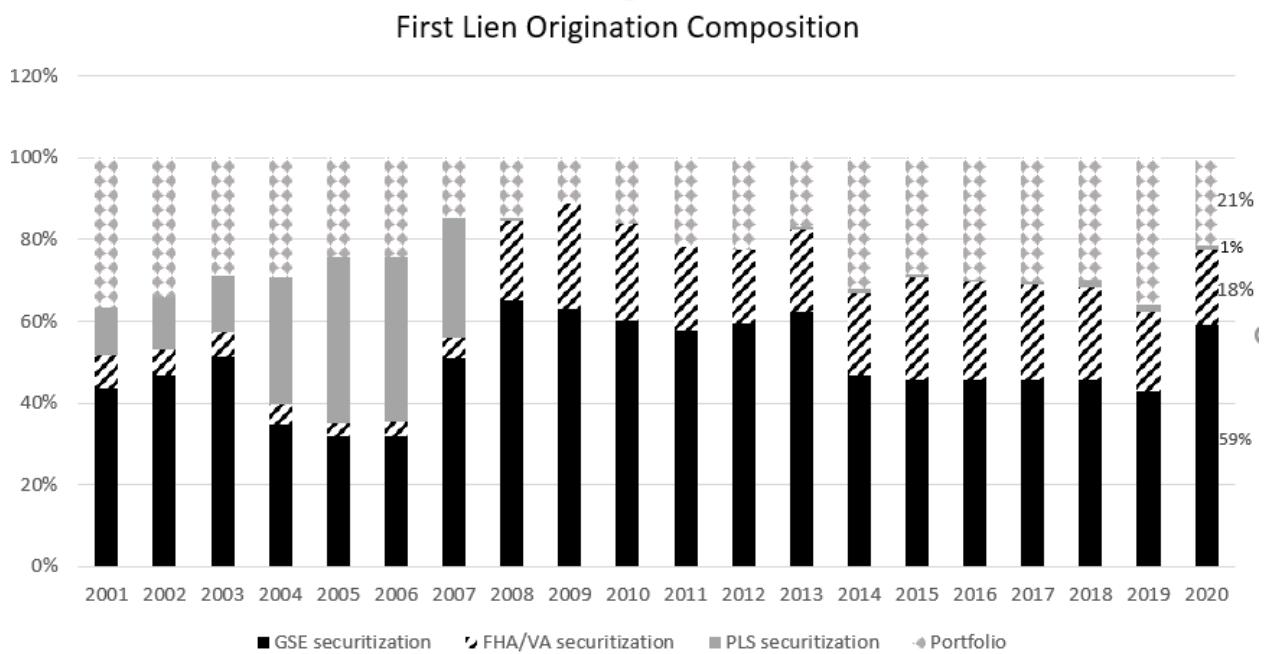
As illustrated in Figure 1, the GSEs continue to play a dominant role in the market recovery, with the GSE share of first-lien mortgage originations at 59 percent in 2020, up from 43 percent in 2019. One analysis found that the FHA and U.S. Department of Veterans Affairs (VA) share declined slightly to 18 percent from 19 percent a year prior.⁴¹ Portfolio lending declined to 21 percent in 2020, down from 36 percent in the third quarter of 2019, and private label securitizations declined to 1 percent from 2 percent a year prior.

³⁹ Brandon Ivey, *Expanded-Credit Lending Inches Up in Third Quarter*, Inside Mortg. Fin. (Nov. 25, 2020), <https://www.insidemortgagefinance.com/articles/219861-expanded-credit-lending-ticks-up-in-3q-amid-slow-recovery> (on file).

⁴⁰ Brandon Ivey, *Outlook on Non-Agency MBS Issuance: Bright and Gloomy*, Inside Mortg. Fin. (Jan. 15, 2021), <https://www.insidemortgagefinance.com/articles/220261-mixed-views-on-the-outlook-for-non-agency-mbs-issuance-in-2021> (on file).

⁴¹ Laurie Goodman *et al.*, Urban Inst., *Housing Finance at a Glance, Monthly Chartbook* (Feb. 2021), https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf (*Housing Finance at a Glance*).

Figure 1



Sources: Urban Institute analysis of Inside Mortgage Finance data (used with permission from Urban Institute)

2. Servicing Market Impacts and Implications for Origination Markets

In addition to the direct impact on origination volume and composition, the pandemic's impact on the mortgage servicing market has downstream effects on mortgage originations, as many of the same entities both originate and service mortgages. Anticipating that a number of homeowners would struggle to pay their mortgages due to the pandemic and related economic impacts, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)⁴² in March 2020. The CARES Act provides certain protections for borrowers with federally backed mortgages, such as those whose mortgages are purchased or securitized by a GSE or insured or guaranteed by the FHA, VA, or U.S. Department of Agriculture (USDA). The CARES Act mandated a 60-day foreclosure moratorium for such mortgages and allowed borrowers to request up to 180 days of forbearance due to a COVID-19-related financial hardship, with an option to extend the forbearance period for an additional 180 days.

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

⁴² Pub. L. 116-136, 134 Stat. 281 (2020).

2021.⁴³ The government agencies also announced an extension in the forbearance enrollment window until June 30, 2021, to provide additional time for borrowers to request a COVID-19 forbearance. FHFA has not yet announced a deadline for borrowers with mortgages backed by the GSEs to enroll in a COVID-19 forbearance plan.

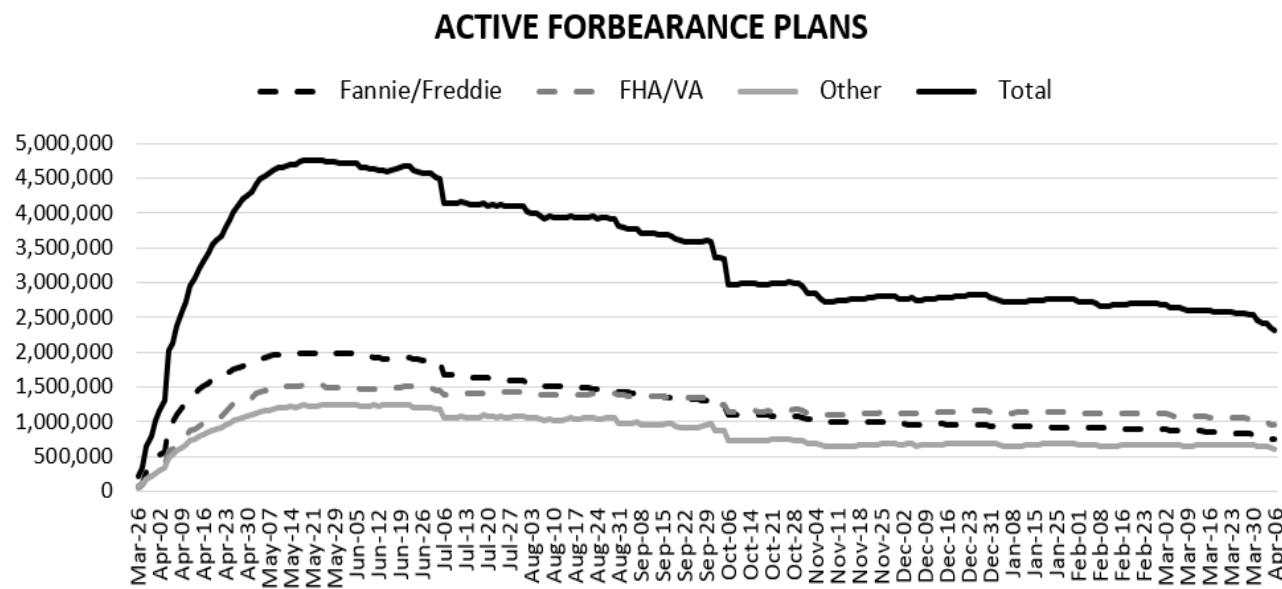
Following the passage of the CARES Act, some mortgage servicers remain obligated to make some principal and interest payments to investors in GSE and Ginnie Mae securities, even if consumers are not making payments.⁴⁴ Servicers also remain obligated to make escrowed real estate tax and insurance payments to local taxing authorities and insurance companies. While servicers are required to hold liquid reserves to cover anticipated advances, early in the pandemic there were significant concerns that higher-than-expected forbearance rates over an extended period of time could lead to liquidity shortages, particularly among many non-bank servicers. While forbearance rates remain elevated at 4.66 percent for the week ending April 4, 2021, they have decreased since reaching their high of 8.55 percent on June 7, 2020, as illustrated in Figure 2 below.⁴⁵

⁴³ Press Release, The White House, *Fact Sheet: Biden Administration Announces Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners* (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>. See also Press Release, Fed. Hous. Fin. Agency, *FHFA Extends COVID-19 Forbearance Period and Foreclosure and REO Eviction Moratoriums* (Feb. 25, 2021), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx>.

⁴⁴ 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, 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>.

⁴⁵ Press Release, Mortg. Bankers Ass'n, *Share of Mortgage Loans in Forbearance Decreases to 4.66%* (April 12, 2021), <https://www.mba.org/2021-press-releases/april/share-of-mortgage-loans-in-forbearance-decreases-to-466-percent>.

Figure 2



Source: Black Knight, Inc. (used with permission from Black Knight, Inc.).

Because many mortgage servicers also originate the loans they service, many creditors, as well as several warehouse providers,⁴⁶ initially responded to the risk of elevated forbearances and higher-than-expected monthly advances by imposing credit overlays—*i.e.*, additional underwriting standards—for new originations. These new underwriting standards included more stringent requirements for non-QM, jumbo, and government loans.⁴⁷ An “adverse market fee” of 50 basis points on most refinances became effective for new originations delivered to the GSEs on or after December 1, 2020, to cover projected losses due to forbearances, the foreclosure moratoria, and other default servicing expenses.⁴⁸ 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,⁴⁹ concerns over non-bank liquidity and related credit overlays have eased, although Federal regulators continue to monitor the situation.⁵⁰ Nonetheless, access to credit for higher-risk but creditworthy consumers remains an ongoing concern given continued uncertainty over the impact of the expiration of foreclosure

⁴⁶ Warehouse providers are creditors that provide financing to mortgage originators and servicers to fund and service loans.

⁴⁷ Maria Volkova, *FHA/VA Lenders Raise Credit Score Requirements*, Inside Mortg. Fin. (Apr. 3, 2020), <https://www.insidemortgagefinance.com/articles/217636-fhava-lenders-raise-fico-credit-score-requirements> (on file).

⁴⁸ 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>.

⁴⁹ On April 10, 2020, Ginnie Mae released guidance on a Pass-Through Assistance Program whereby Ginnie Mae will provide financial assistance at a fixed interest rate to servicers facing a principal and interest shortfall as a last resort. Ginnie Mae, *All Participant Memorandum (APM) 20-03: Availability of Pass-Through Assistance Program for Participants in Ginnie Mae’s Single-Family MBS Program* (Apr. 10, 2020), https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=105. On April 7, 2020, Ginnie Mae also announced approval of a servicing advance financing facility, whereby mortgage servicing rights are securitized and sold to private investors. Press Release, Ginnie Mae, *Ginnie Mae approves private market servicer liquidity facility* (Apr. 7, 2020), <https://www.ginniemae.gov/newsroom/Pages/PressReleaseDispPage.aspx?ParamID=194>.

⁵⁰ Fin. Stability Oversight Council, U.S. Dep’t of the Treasury, *2020 Annual Report*, at 169 (2020), <https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf>.

moratoria and COVID-19 forbearance plans on the mortgage market as well as creditor capacity constraints due to strong refinance demand.⁵¹

III. Legal Authority

The Bureau is issuing this final rule to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the “consumer financial protection functions” previously vested in certain other Federal agencies, including the Board. The Dodd-Frank Act defines the term “consumer financial protection function” to include “all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.”⁵² 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.⁵³

A. TILA

TILA section 105(a). Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion

⁵¹ Nat'l Mortg. News, *Opinion: The origination feast and credit famine* (Oct. 4, 2020), <https://www.nationalmortgagenews.com/opinion/the-originations-feast-and-credit-availability-famine> (on file). This final rule is separate from the Bureau's pending proposal to amend certain provisions of Regulation X to assist borrowers affected by the COVID-19 pandemic, which was published in the *Federal Register* on April 9, 2021. Because the purpose of this final rule complements the purpose of the Bureau's pending proposal, the Bureau believes that it is appropriate to finalize this rule regardless of how it proceeds with its pending proposal.

⁵² 12 U.S.C. 5581(a)(1)(A).

⁵³ 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).

thereof, or to facilitate compliance therewith.⁵⁴ A purpose of TILA is “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.”⁵⁵ 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.⁵⁶ The Bureau is issuing this final rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

TILA section 129C(b)(2)(A). TILA section 129C(b)(2)(A)(vi) provides the Bureau with authority to establish guidelines or regulations relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i).⁵⁷ The Bureau is issuing this final rule pursuant to its authority under TILA section 129C(b)(2)(A)(vi).

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

⁵⁴ 15 U.S.C. 1604(a).

⁵⁵ 15 U.S.C. 1601(a).

⁵⁶ 15 U.S.C. 1639b(a)(2).

⁵⁷ 15 U.S.C. 1639c(b)(2)(A).

such sections.⁵⁸ In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of section 129C.⁵⁹ The Bureau is issuing this final rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

B. Dodd-Frank Act

Dodd-Frank Act section 1022(b). Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.⁶⁰ TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, 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.

IV. Section-by-Section Analysis

1026.43 Minimum Standards for Transactions Secured by a Dwelling

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

⁵⁸ 15 U.S.C. 1639c(b)(3)(B)(i).

⁵⁹ 15 U.S.C. 1639c(b)(3)(A).

⁶⁰ 12 U.S.C. 5512(b)(1).

Additionally, under the Patch Extension Final Rule, the Temporary GSE QM loan definition expires upon the earlier of the General QM Final Rule’s mandatory compliance date or the date the applicable GSE ceases to operate under conservatorship. Therefore, under the mandatory compliance date established by the General QM Final Rule, creditors seeking to originate QMs had the additional option of complying with the Temporary GSE QM loan definition, but only if the application for the covered transaction was received before either July 1, 2021, or the date the applicable GSE ceased to operate under conservatorship, whichever came first.

This final rule delays the General QM Final Rule’s mandatory compliance date from July 1, 2021 to October 1, 2022, as the Bureau proposed. Specifically, the final rule amends comments 43-2 and 43(e)(4)-2 and -3 to reflect a delay of the mandatory compliance date by changing the date “July 1, 2021” where it appears in those comments to “October 1, 2022.” The Bureau is also adding comment 43(e)(2)-1 to clarify that both the original, DTI-based General QM loan definition and the revised, price-based General QM loan definition are available to creditors for transactions for which a creditor received an application on or after March 1, 2021, but prior to October 1, 2022. The specific amendments to the commentary are the same as the amendments the Bureau proposed. The Bureau is also correcting a typographical error in comment 43(e)(4)-2 by replacing “thorough” with “through.”

With these changes, creditors seeking to originate General QMs will have the option of complying with either the revised, price-based General QM loan definition or the original, DTI-based General QM loan definition for transactions for which a creditor received the consumer’s application on or after March 1, 2021, but prior to October 1, 2022. For transactions for which a creditor received the consumer’s application on or after October 1, 2022, creditors seeking to

originate General QMs will have to use the revised, price-based General QM loan definition. Additionally—because the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date the applicable GSE ceases to operate under conservatorship, whichever comes first—creditors seeking to originate QMs will have the additional option of complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either October 1, 2022, or the date the applicable GSE ceases to operate under conservatorship, whichever comes first. The Bureau recognizes that the practical availability of the Temporary GSE QM loan definition may be affected by policies or agreements created by parties other than the Bureau, such as the Preferred Stock Purchase Agreements (PSPAs), which include restrictions on GSE purchases that rely on the Temporary GSE QM loan definition after July 1, 2021.⁶¹

Reasons for Delaying the Mandatory Compliance Date to October 1, 2022

The Bureau is issuing this final rule because it has concluded that maintaining the July 1, 2021 mandatory compliance date may leave some struggling homeowners with fewer options by reducing the flexibility of creditors to respond to the effects of the pandemic. In the Patch Extension Final Rule and the General QM Final Rule, the Bureau noted the disruptive effects of the pandemic on the mortgage market but nevertheless concluded that these effects did not justify the adoption of a mandatory compliance date later than July 1, 2021. Upon further evaluation, the Bureau has concluded that it may not have given sufficient weight to the potential risk that mandating the transition to the price-based approach in the revised General QM loan

⁶¹ On January 14, 2021, the U.S. Department of the Treasury and FHFA amended the terms of the PSPAs for Fannie Mae and Freddie Mac. Section 5.14(c) was added to the agreement and limits the GSEs' acquisition of certain loans on or after July 1, 2021, including loans that are not qualified mortgages as defined by 12 CFR 1026.43(e)(2), (5), (6), (7) or (f) with certain exceptions. See Letter of Treasury Secretary Steven T. Mnuchin to FHFA Director Mark Calabria (Jan. 14, 2021), <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf>.

definition on July 1, 2021 could restrict options for consumers struggling with the disruptive effects of the pandemic. The Bureau has concluded that preserving flexibility to respond to the effects of the pandemic, by delaying the mandatory compliance date until October 1, 2022, outweighs concerns that a delay of the mandatory compliance date could stifle the development of private-sector approaches to underwriting or a rebound of the non-GSE private market in the near term.

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

The Bureau notes that this rulemaking does not reconsider the revised, price-based General QM loan definition that was adopted in the General QM Final Rule. This definition went into effect on March 1, 2021, and creditors have the option of using it to originate QMs. Rather, this final rule concludes that it would be appropriate in light of the continuing disruptive effects of the pandemic to help facilitate greater creditor flexibility and expanded availability of responsible, affordable credit options for some struggling consumers by also providing QM status to loans originated under the original, DTI-based General QM loan definition and, potentially, under the Temporary GSE QM loan definition until October 1, 2022.

The Bureau is issuing this final rule due to concerns that requiring creditors seeking to make QM loans to shift to the revised, price-based General QM loan definition could reduce access to credit, particularly for certain consumer segments. As discussed in detail in part IV of

the proposal, the Bureau has two concerns related to access to responsible, affordable mortgage credit.

First, as discussed in the proposal, the Bureau believes that ongoing regulatory interventions to assist consumers who may have suffered an income disruption related to the pandemic—such as COVID-19 forbearance plans and foreclosure moratoria—and potential disruptions in the market when those interventions expire warrant a delay of the mandatory compliance date.⁶² The Bureau is concerned that the impact of the eventual expiration of foreclosure moratoria and COVID-19 forbearance plans described in part II.D above has the potential to lead to additional disruptions in the mortgage markets. The Bureau has concluded that it may not have given sufficient weight to these issues in mandating that creditors comply with the price-based approach on July 1, 2021. In addition, the Bureau has concluded that the extension of certain forbearance programs and foreclosure moratoria may result in these effects continuing longer than the Bureau anticipated at the time of the General QM Final Rule, and the Bureau concludes that delaying the mandatory compliance date of the General QM Final Rule to October 1, 2022 will provide additional flexibility to creditors originating QM loans.

Second, as discussed in the proposal, the Bureau has concerns about mortgage credit availability for some creditworthy consumers who would qualify for a mortgage but for the disruptive market effects of the pandemic, and believes that such concerns warrant a delay of the mandatory compliance date.⁶³ The Bureau seeks to avoid a reduction in credit access for certain consumers who have been unable to purchase or refinance due to the effects of the pandemic on the origination market. As described in the proposal, the Bureau is concerned that, despite the

⁶² 86 FR 12839, 12848-50 (Mar. 5, 2021).

⁶³ *Id.* at 12850-53.

record origination volumes, access to low interest-rate refinances and purchase mortgages in these unique circumstances may be less widely available for consumers with weaker credit relative to consumers with stronger credit in part due to creditor capacity constraints as opposed to the standard risk-based pricing adjustments that creditors typically charge. The Bureau is finalizing this proposal because it is concerned that requiring creditors to transition to the revised, price-based General QM loan definition on July 1, 2021—and eliminating the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition at that time—will exacerbate these credit-access concerns.

For the reasons described above, the Bureau is finalizing the proposed revisions to the commentary. The mandatory compliance date for the General QM Final Rule is October 1, 2022. For covered transactions for which creditors receive an application on or after the March 1, 2021 effective date and before the October 1, 2022 mandatory compliance date, creditors have the option of complying with either the revised, price-based General QM loan definition or the original, DTI-based General QM loan definition. Additionally—because the Temporary GSE QM loan definition expires on the mandatory compliance date of the General QM Final Rule or the date the applicable GSE ceases to operate under conservatorship, whichever comes first—creditors seeking to originate QMs will have the additional option of complying with the Temporary GSE QM loan definition, if the application for the covered transaction was received before either October 1, 2022 or the date the applicable GSE ceases to operate under conservatorship, whichever comes first.⁶⁴ This final rule will be effective on June 30, 2021.

Comments and Responses

⁶⁴ As noted above, however, the availability of the Temporary GSE QM loan definition may be affected by policies or agreements created by parties other than the Bureau, such as the PSPAs, which include restrictions on GSE purchases that rely on the Temporary GSE loan QM definition after July 1, 2021. *See supra* note 61 and accompanying text.

The Bureau received 24 unique comments on the proposal. The Bureau summarizes and responds to these comments below.

Comments on the Bureau's reasons for delaying the compliance date. The Bureau received many comments on the reasons that it described in the proposal for delaying the mandatory compliance date, which are related to the impact of the COVID-19 pandemic on the mortgage market. Commenters varied in their views as to whether delaying the mandatory compliance date would have the desired effect of mitigating the pandemic-related disruptions identified in the proposal.

Nearly all commenters agreed with the Bureau's concerns that pandemic-related disruptions have significantly impacted the mortgage market, and several commenters agreed that delaying the mandatory compliance date to October 1, 2022 would help ensure access to responsible, affordable mortgage credit and preserve flexibility for consumers affected by the COVID-19 pandemic and its economic effects, as the Bureau stated in the proposal. One industry commenter stated that the proposed delay of the mandatory compliance date would prove especially helpful to small institutions such as community banks in providing access to credit, as they may not be ready to comply with the revised, price-based General QM loan definition by July 1, 2021. This commenter also stated that the Temporary GSE QM loan definition, in particular, has played an important role in providing access to credit for minority, younger, millennial, non-W-2, and low-income consumers. Another industry commenter suggested that the Bureau delay the mandatory compliance date for as long as possible. The commenter recommended that, if the Bureau delays the mandatory compliance date to October 1, 2022, the Bureau set up a future review to ensure the sufficiency of that date.

Another industry commenter stated that the additional flexibility afforded to credit unions by a delay of the mandatory compliance date will assist consumers who may not have otherwise been able to obtain a mortgage under the revised, price-based General QM loan definition due to the current lending environment and impacts of the pandemic. This commenter stated that it agreed with the Bureau that delaying the mandatory compliance date would disincentivize the mispricing of loans for higher-risk borrowers that the comment stated is occurring as a result of pandemic-related market conditions, such as the high volume of mortgage originations as the proposal discussed.

A coalition of consumer advocates stated that delaying the mandatory compliance date would give creditors the flexibility to provide credit and allow servicers to focus on assisting consumers with post-forbearance options. The commenter stated that, with relatively high unemployment rates and 2.5 million consumers in active forbearance plans, the industry and the Bureau should remain focused on resolving forbearance plans to minimize unnecessary foreclosures. The commenters added that, given the resources necessary to move these borrowers into a post-forbearance accommodation, allowing the continued use of multiple QM definitions will mitigate the extent to which disruptions in the servicing market affect the origination market. An industry commenter stated that servicers are currently focused on assisting the unprecedented number of borrowers exiting forbearance, noting that the reperformance of loans currently in forbearance is of critical importance to overall market stability. This commenter also stated that the current economic conditions do not create an environment conducive to the implementation of major regulatory changes. These commenters and another industry commenter stated generally that the flexibility afforded to creditors by

keeping multiple QM definitions available is warranted given the uncertain trajectory of the United States' economic recovery from the pandemic.

One industry commenter stated that recent market trends related to the pandemic necessitate additional time for implementation beyond the time that is typically needed. Specifically, the commenter stated that the early-2021 increase in mortgage interest rates may cause a decline in profits as creditors are required to simultaneously implement many post-forbearance loss mitigation and resolution requirements as forbearance plans come to an end. This commenter also stated that the GSEs are preparing to implement new capital standards that are estimated to increase mortgage rates and that the Bureau should study the impact on pricing, consumers, and the market as well as allow creditors time to adapt to the multiple challenges presented.

Many commenters opposed the Bureau's proposal to delay the mandatory compliance date and stated that the proposed delay would not result in the credit-access benefits cited by the Bureau. Several industry commenters stated that loans that obtain QM status through the revised, price-based General QM loan definition overlap significantly with loans that obtained QM status through the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition. They stated that, as a result, the impact on access to credit of delaying the mandatory compliance date would be minimal at best. While these commenters acknowledged the economic stress the pandemic has placed on the industry and on consumers, they argued that the Bureau has not identified a sufficient basis to conclude that delaying the mandatory compliance date would mitigate these disruptions. These commenters asserted that the proposal did not provide data or analysis demonstrating the need for the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition for an extended period of

time, given the expansive nature of the revised, price-based General QM loan definition. These commenters also stated that recent purchase restrictions in the PSPAs for Fannie Mae and Freddie Mac will limit the effects of a delay of the mandatory compliance date, as discussed further below. A coalition comprised primarily of consumer advocates stated that despite their belief that extending the Temporary GSE QM loan definition through an extension of the mandatory compliance date is not necessary, they also believe that such an extension will do no harm.

Several industry commenters asserted that the Bureau failed to identify a clear nexus between the consumers who would be affected by the pandemic and those who could specifically benefit from the original, DTI-based General QM loan definition. One commenter stated that few loans with DTI ratios below 43 percent would be priced with an interest rate spread more than 2.25 percentage points above APOR. This commenter also stated that the burden of complying with appendix Q can have an adverse impact on access to credit. This commenter also stated that borrowers most likely to have been impacted by the pandemic include those who suffered an income disruption or increased debt loads, and that the Bureau had not explained how those particular borrowers are likely to benefit from the original, DTI-based General QM loan definition, which requires substantial income documentation.

While no commenters disputed that the pandemic has disrupted the mortgage industry, some commenters disagreed with the Bureau's explanations of how delaying the mandatory compliance date would address the two types of market problems it identified in the proposal. With regard to the first issue identified in the proposal—the upcoming expiration of forbearance plans and foreclosure moratoria—one industry commenter stated that the GSEs and government agencies are offering streamlined post-forbearance loss mitigation options that should assist

families in keeping their homes and that high levels of home equity should make it possible for many consumers who seek to sell their homes to do so, which would mitigate the need for a delay in the mandatory compliance date. Another industry commenter stated that delaying the mandatory compliance date is unlikely to materially increase access to credit and also noted that the supply of available homes falls far short of purchaser demand, and therefore they expect no shortage of qualified borrowers.

With regard to the second issue identified in the proposal relating to access to credit—the availability of mortgage credit for some creditworthy consumers who would qualify for a mortgage but for the disruptive market effects of the pandemic—one commenter acknowledged the supporting data the Bureau put forward in the proposal but noted the proposal lacked quantitative data specifically related to creditor capacity constraints and credit overlays. This commenter reiterated that even if these capacity constraints and overlays are substantiated, the Bureau has not provided evidence that a delay of the mandatory compliance date would mitigate these identified concerns. A separate industry commenter stated that industry-wide adoption of the revised, price-based General QM loan definition may actually make the market more efficient, alleviating some of the pandemic-related capacity constraints that some creditors are facing and that the Bureau identified in the proposed rule. This commenter asserted that the revised, price-based General QM loan definition should provide ample access to credit for creditworthy consumers during the pandemic recovery.

Many industry and consumer advocate commenters addressed the impact of recent amendments to the PSPAs on the proposed rationale for delaying the mandatory compliance date. Commenters stated that these amendments may prevent the GSEs from purchasing loans based on the Temporary GSE QM loan definition after July 1, 2021, and therefore may

significantly limit the impact of the mandatory compliance date delay, absent revisions to the agreements.⁶⁵

Many industry and consumer advocate commenters that supported delaying the mandatory compliance date suggested that the Bureau also advocate for a change to the PSPAs that would allow for the purchase of Temporary GSE QM loans during the proposed delay of the mandatory compliance date. They stated that loans originated under the Temporary GSE QM loan definition are crucial to maintaining market stability and access to credit for certain segments of the market, such as minorities and low- to moderate-income consumers. One industry commenter suggested that credit unions, in particular, rely on the Temporary GSE QM loan definition to lend in their communities and stated that their internal industry survey data suggest that 61 percent of their outstanding mortgages qualified to be sold to the GSEs and that 19 percent of survey respondents indicated that the expiration of the Temporary GSE QM loan definition would have a material impact on their credit union.⁶⁶

Several industry commenters that opposed delaying the mandatory compliance date stated that certain ways in which the Bureau stated the delay would address market disruptions, such as by providing the GSEs with the flexibility to tailor programs to meet challenges specific to the COVID-19 pandemic, may be thwarted by restrictions on Temporary GSE QM loans in the PSPAs. Moreover, they stated that the existing language in the PSPAs would not constrict access to credit, as most loans covered by the Temporary GSE QM loan definition would also be covered by the revised, price-based General QM loan definition. One industry commenter also

⁶⁵ On January 14, 2021, the U.S. Department of the Treasury and FHFA amended the terms of the PSPAs for Fannie Mae and Freddie Mac. Section 5.14(c) was added to the agreement and limits the GSEs' acquisition of certain loans on or after July 1, 2021, including loans that are not qualified mortgages as defined by 12 CFR 1026.43(e)(2), (5), (6), (7) or (f) with certain exceptions.

⁶⁶ The comment did not provide a copy of or citation to the survey described.

argued that a delay in the mandatory compliance date would not provide additional implementation time because, in light of the PSPAs, creditors would likely need to comply with the revised, price-based General QM loan definition in order to sell their loans to the GSEs as of July 1, 2021.

A few industry commenters noted that additional provisions were included in the PSPAs that restrict access to credit such as certain limitations on the purchases of second homes, investor properties, and higher-risk single-family loans. Specifically, these commenters cited the PSPA limitation on the acquisitions of loans with two out of three high-risk characteristics, defined as a loan-to-value ratio (LTV) of 90 percent or greater, a DTI of 45 percent or greater, and a credit score of 680 or less. These commenters were concerned that such limitations would impair access to credit and noted that a quick implementation of the revised, price-based General QM loan definition may mitigate some of these impacts.

Response. The Bureau is finalizing the proposed rule to delay the mandatory compliance date until October 1, 2022 because it has concluded that delaying the mandatory compliance date until that date will help ensure access to responsible, affordable mortgage credit and will help preserve flexibility for consumers affected by the COVID-19 pandemic and its economic effects. While the Bureau acknowledges that future access-to-credit impacts of this delay are subject to uncertainty, providing additional options to originate loans with multiple pathways to QM status will increase flexibility for creditors and secondary market participants to serve emerging market needs and will help increase access to mortgage credit for consumers during a period of significant economic stress. With respect to the commenter recommendation to set up a future review of the delayed mandatory compliance date, the Bureau will continue to monitor for any

unanticipated effects of the COVID-19 pandemic on market conditions to determine if future changes are warranted.

The Bureau has concluded that delaying the mandatory compliance date will expand access to credit and allow industry participants to focus on offering struggling consumers post-forbearance options. No commenters disputed the disruptive impact of the pandemic on the mortgage industry. In the proposed rule, the Bureau focused its analysis on the impact of expanded access to credit on facilitating interest rate-reducing refinances as well as allowing creditworthy purchasers to absorb some of the distressed properties that may enter the market due to the inability of the seller to maintain a post-forbearance payment. But as noted above, several industry and consumer advocate commenters stated that allowing creditors more time to implement the revised, price-based General QM loan definition will allow servicers to focus their efforts on keeping struggling consumers in their homes, which will likely reduce the number of distressed properties that enter the market. The Bureau determines that this rationale provided by commenters is an additional, although not necessary, reason to delay the mandatory compliance date to October 1, 2022. The Bureau has concluded that, given the significant uncertainty in the mortgage market with regard to the effects of forbearance plans and foreclosure moratoria expiring, delaying the mandatory compliance date will provide both servicers and creditors with the flexibility to use multiple QM definitions and reallocate resources between origination and servicing departments to best assist consumers. The Bureau believes this may reduce some operational capacity constraints in the servicing market, although the Bureau expects servicer operational capacity constraints to continue at least through the end of this year.

The Bureau further concludes that the pandemic has had the effect of restricting access to credit for higher-risk, yet creditworthy consumers and that delaying the mandatory compliance date may ease these credit-access concerns by providing multiple pathways to QM status. The Bureau notes that, with the exception of one industry commenter,⁶⁷ commenters did not question the Bureau’s findings that access to credit has been constrained for higher-risk, yet creditworthy borrowers due to creditor capacity limitations and creditor precautions intended to ensure that new originations are less likely to request a COVID-19 forbearance in the future. Several industry commenters agreed with the proposal’s analysis of this issue. The Bureau acknowledges that, given the continually evolving nature of both the pandemic’s impact on the mortgage market and responses by regulators, there is uncertainty as to the extent to which delaying the mandatory compliance date will increase access to credit. However, the Bureau concludes that, to some extent, the additional flexibility provided by this final rule will increase—rather than decrease—access to credit.

Moreover, the Bureau is concerned that temporarily, non-agency market constraints created by the pandemic could make it more difficult for some creditworthy borrowers with the ability to repay mortgage loans that currently qualify for QM status under the original, DTI-based General QM loan definition to obtain such loans if those loans no longer qualify for QM status based on the revised, price-based General QM loan definition. For example, as discussed in the section 1022(b) analysis in part V, of the 33,000 additional consumers expected to obtain conventional QM loans priced 2.25 percentage points or higher above APOR due to this rule, 28,000 are expected to obtain QM status through the original, DTI-based General QM loan

⁶⁷ This industry commenter did not challenge the Bureau’s findings that access to credit has been restricted for higher-risk consumers, but asserted that the Bureau did not provide quantitative data in support of creditor capacity constraints.

definition. The Bureau estimates that the continued availability of the original, DTI-based General QM loan definition and, potentially, the Temporary GSE QM loan definition each separately provide beneficial access to credit under this final rule. As a result, even if the PSPAs continue to restrict GSE purchases that rely on the Temporary GSE loan QM definition after July 1, 2021, as some commenters noted, the Bureau concludes that the final rule will increase access to mortgage credit relative to the current rule under which the original, DTI-based General QM loan definition would no longer be available starting July 1, 2021. The benefits from leaving the Temporary GSE QM loan definition in place until October 1, 2022 and the benefits from creditors using the original, DTI-based General QM loan definition during that period are, in the Bureau’s view, each independently sufficient reasons for delaying the mandatory compliance date.

As the proposal stated, while the Bureau acknowledges that policies, agreements, or legislation created by parties other than the Bureau—including the PSPAs—may limit the impact of the mandatory compliance date delay, the Bureau is unable to predict how such agreements or restrictions might change in the future. The Bureau also notes that sections 5.14(c)(iii)-(vi) of the letter agreements amending the PSPAs appear to provide FHFA with the authority to allow the GSEs to purchase certain loans that do not comply with the QM definitions listed in section 5.14(c)(i).⁶⁸ These include loans secured by investment properties, high-LTV streamlined refinances, and single family loans secured by manufactured housing. The letter agreements also appear to provide broad authority for FHFA and the GSEs to establish temporary underwriting flexibilities during times of exigent circumstances. While the agreement appears to provide

⁶⁸ Section 5.14(c)(i) limits GSE loan purchases after July 1, 2021 to loans that satisfy the General QM loan definition, Small Creditor QM loan definition, Seasoned QM loan definition, or Balloon Payment QM loan definition.

FHFA discretion to determine whether it will allow the GSEs to exercise these additional purchase flexibilities, issuing this final rule to delay the mandatory compliance date will confer QM status to these loans if FHFA decides it is necessary to exercise this authority. QM status may prove valuable in the future given the uncertain market outlook as a result of the COVID-19 pandemic. Absent this final rule, if FHFA and the GSEs exercised this authority, it would permit the GSEs to purchase certain non-QM loans. The Temporary GSE QM loan definition confers QM status on loans eligible for sale to the GSEs. Therefore, finalizing this rule will allow FHFA to exercise this authority for the GSEs and other secondary market participants to instead purchase these loans with QM status, which may increase access to credit through lower pricing and greater secondary market liquidity.

Comments on uncertainty about the General QM loan definition. Several industry commenters stated that the proposal has created uncertainty with respect to whether the Bureau will permit the revised, price-based General QM loan definition to remain in effect. For example, several industry commenters stated that the Bureau’s primary purpose in delaying the mandatory compliance date is to facilitate reconsideration of the General QM loan definition. Several commenters stated that the Bureau’s February 23, 2021 Statement⁶⁹ has contributed to this uncertainty.

Commenters also stated that this uncertainty may deter creditors and vendors from continuing to invest in the resources and training necessary to implement the revised, price-based General QM loan definition. One commenter stated that this uncertainty will likely result in market participants experiencing compliance challenges that may divert resources away from other needs, in particular from responding to borrower requests for assistance due to hardships

⁶⁹ See *supra* part II.B.

experienced under the COVID-19 pandemic, until there is assurance that the Bureau will permit the revised, price-based General QM loan definition to remain in effect. Industry commenters also asserted that delays in implementing the price-based approach could negatively affect access to credit; for example, they suggested that it could inhibit innovative underwriting approaches that, in the view of these commenters, would benefit minority borrowers in particular.

Response. The Bureau understands that some industry uncertainty has resulted from the Bureau's Statement providing transparency about its plans to consider at a later date whether to reconsider other aspects of the General QM Final Rule, as well as from the Bureau's reiteration in the proposal of the applicable language from the Statement. However, this final rule concerns the delay of the mandatory compliance date from July 1, 2021 to October 1, 2022. Commenters did not explain why delaying the mandatory compliance date to October 1, 2022, in and of itself, would meaningfully increase uncertainty in the market about whether the Bureau will reconsider other aspects of the General QM Final Rule, and the Bureau does not believe that delaying the mandatory compliance date to October 1, 2022 would have this effect.

The Bureau also notes that, while many industry commenters stated that uncertainty about potential reconsideration of the revised, price-based General QM loan definition will deter creditors from implementing the revised General QM loan definition (and therefore mitigate benefits from that final rule), commenters did not identify examples of this occurring in the market. In contrast, the Bureau understands that several larger creditors have already implemented the revised, priced-based General QM loan definition and announced new products that are underwritten in accordance with the revised definition that went into effect on March 1,

2021.⁷⁰ Even if uncertainty results in some creditors choosing to delay implementation of the revised, price-based General QM loan definition, and even if that result could be attributed to the rule, the Bureau concludes that such delays are unlikely to result in significant limitations on access to responsible, affordable mortgage credit under the price-based approach and do not outweigh the potential credit-access benefits of delaying the mandatory compliance date.

Comments on general implementation issues. Several industry commenters stated that they supported the Bureau’s proposal to delay the mandatory compliance date because the delay would give them more time to prepare to comply with the revised, priced-based General QM loan definition. In contrast, one industry commenter stated that delaying the mandatory compliance date would disrupt market participants’ efforts to bring their systems into compliance with the price-based approach and cause market participants to incur additional compliance-related costs for training, Loan Origination System adjustments, secondary market integrations, and amendments to policies and procedures. Other industry commenters stated that delaying the mandatory compliance date was not necessary because many creditors have already implemented the price-based approach and several others have made preparations to implement it by the original mandatory compliance date of July 1, 2021. One commenter stated that creditors and vendors have slowed or paused implementation efforts in anticipation of the Bureau’s decision to delay the mandatory compliance date and urged the Bureau to issue a final rule to restore certainty to the market and allow all market participants time to adapt. One industry commenter requested that the Bureau clarify whether creditors may use either the original, DTI-based General QM loan definition or the revised, price-based General QM loan definition on a loan-by-

⁷⁰ See, e.g., Brandon Ivey, Some Non-Agency Lenders Embracing New QM Rule, Inside Mortg. Fin. (Mar. 26, 2021), <https://www.insidemortgagefinance.com/articles/220914-some-non-agency-lenders-embracing-cfpbs-qm-changes>.

loan basis prior to the mandatory compliance date, or whether they must use one definition or the other for all their loans.

Response. Regarding the comment that delaying the mandatory compliance date would disrupt market participants' efforts to bring their systems into compliance with the price-based approach and impose additional compliance-related costs, the Bureau notes that, with or without this final rule, creditors that wish to originate General QM loans must implement the revised, price-based General QM loan definition before October 1, 2022 and thus face the same compliance requirements. In addition, the Bureau reiterates that the purpose of this final rule is to preserve flexibility by allowing creditors to continue to use the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition until October 1, 2022. Accordingly, creditors that wish to use the revised, price-based General QM loan definition exclusively by July 1, 2021, as was originally required under the General QM Final Rule, may still do so and avoid any additional compliance-related costs associated with the flexibility provided by this final rule. As many commenters noted, delaying the compliance date will simply provide market participants with more time to bring their systems into compliance with the revised, price-based General QM loan definition.

With respect to the comment stating that delaying the mandatory compliance date is not necessary because many creditors have already implemented the revised, price-based General QM loan definition and several others are prepared to implement it by the original mandatory compliance date, the Bureau notes that these creditors will not be harmed by delaying the mandatory compliance date. Moreover, as discussed above under "Comments on the Bureau's Reasons for Delaying the Mandatory Compliance Date," some commenters have reported that creditors have experienced challenges implementing the revised, price-based General QM loan

definition because of resource constraints due to the recent forbearance plan and foreclosure moratoria extensions and the need to find sustainable post-forbearance alternatives to keep consumers in their homes. As noted above, the Bureau concludes that these challenges identified by these commenters provide an additional, although not necessary, reason for delaying the mandatory compliance date.

Regarding the comment asking the Bureau to clarify that the original, DTI-based General QM loan definition and the revised, priced-based General QM loan definition are available on a loan-by-loan basis, the Bureau notes that, as new comment 43(e)(2)-1 states, both the original, DTI-based General QM loan definition and the revised, price-based General QM loan definition are available to creditors for transactions for which the creditor receives an application on or after March 1, 2021, but prior to October 1, 2022.

Finally, the Bureau received many comments about the merits of the General QM loan definition and the Seasoned QM loan definition. The purpose of this rulemaking is not to address the merits of the General QM loan definition or the Seasoned QM loan definition. These comments are therefore outside the scope of this rulemaking. As the Bureau stated in the Statement and states in this final rule, the Bureau will consider at a later date whether to initiate a rulemaking to revisit others aspects of the General QM loan definition and the Seasoned QM loan definition.

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

A. Overview

As discussed above, this final rule will delay the mandatory compliance date of the General QM loan definition from July 1, 2021 to October 1, 2022. 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 the prudential regulators and other appropriate Federal agencies regarding the consistency of the final rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

B. Data and Evidence

The discussion in this impact analysis relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA⁷¹ data, as well as other publicly available sources. In particular, as indicated in the proposal, the data and evidence published in the Bureau’s General QM Final Rule inform this analysis. Also as indicated in the proposal, the Bureau conducted an assessment of the ATR/QM Rule and published its ATR/QM Rule Assessment Report as required under section 1022(d) of the Dodd-Frank Act.⁷² The Assessment Report provides quantitative and qualitative information on questions relevant to the final rule, including the effect of QM status relative to non-QM status on access to credit.

⁷¹ 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/>.

⁷² Bureau of Consumer Fin. Prot., *Ability to Repay and Qualified Mortgage Assessment Report* (Jan. 2019), https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.

Consultations with other regulatory agencies, industry, and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, pricing, and performance of mortgage loans originated in recent years. While these data allow the Bureau to estimate the number of mortgage loans historically that would have satisfied the different QM definitions applicable under the baseline or the final rule, the Bureau cannot estimate with precision how consumers may respond to changes in the QM definitions by obtaining alternative loan products or how creditors may respond by changing loan pricing or product offerings.

The Bureau received several comments on the proposal's impact analysis. Two industry commenters stated that the Bureau provided insufficient explanation or support for its estimate that 33,000 additional consumers would obtain high-priced conventional QM loans due to the rule. As stated in the proposal's impact analysis, the Bureau relied on HMDA data and the evidence published in the Bureau's General QM Final Rule for its analysis. The Benefits to Consumers section of the proposal stated that between July 1, 2021 and October 1, 2022, approximately 33,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the final rule due to the availability of the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition.

In addition, an industry commenter stated that the Bureau's 1022(b) analysis did not account for the effect of the GSE PSPAs when estimating the impacts of the rule. The proposal's impact analysis included a footnote estimating that if the GSEs do not purchase loans above the General QM Final Rule's pricing thresholds during the duration of the mandatory compliance date delay, approximately 28,000 additional consumers would obtain conventional QM loans

priced 2.25 percentage points or higher above APOR under the proposal.⁷³ This estimate reflects possible impacts of the rule if the GSE PSPAs prevent the GSEs from purchasing loans above the pricing thresholds established in the General QM Final Rule.

Regarding potential compliance costs, as noted above, a trade association commented that delaying the mandatory compliance date would disrupt market participants' efforts to bring their systems into compliance with the General QM Final Rule and cause market participants to incur additional compliance-related costs. However, as noted above, with or without this final rule, creditors that wish to originate General QM loans must implement the revised, price-based General QM loan definition before October 1, 2022 and thus face the same compliance requirements. The final rule benefits creditors by providing additional time to implement these requirements.

As discussed above, many industry commenters stated that uncertainty about potential reconsideration of the revised, price-based General QM loan definition will deter creditors from implementing the revised General QM loan definition (and therefore mitigate benefits from that final rule). However, commenters did not identify examples of this occurring in the market, which tends to reduce the credibility of this concern. Moreover, as discussed above, the Bureau understands that several larger creditors have already implemented the revised, priced-based General QM loan definition and announced new products that are underwritten in accordance with the revised definition.⁷⁴ And as already noted, the Bureau does not believe this final rule delaying the mandatory compliance date will meaningfully increase uncertainty in the market.

⁷³ 86 FR 12839, 12855 n.98 (Mar. 5, 2021).

⁷⁴ The Bureau does recognize that some creditors have experienced implementation challenges, as discussed above, from resource constraints due to the recent forbearance plan and foreclosure moratoria extensions and the need to find sustainable post-forbearance alternatives to keep consumers in their homes.

Even if uncertainty results in some creditors choosing to delay implementation of the revised, price-based General QM loan definition, and even if that result could be attributed to the rule, the Bureau is not aware of any reason to believe that the effect would be large enough to result in significant limitations on access to responsible, affordable mortgage credit.

Finally, several industry, trade association, and consumer group commenters requested that the Bureau expand public access to the National Mortgage Database for market monitoring and research purposes. The Bureau acknowledges these comments but considers them to be outside the scope of this final rule.

C. Description of the Baseline

The Bureau considers the benefits, costs, and impacts of the final rule against the baseline in which the Bureau takes no action and compliance with the revised General QM loan definition becomes mandatory on July 1, 2021, when the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition expire and can no longer be used by creditors to obtain QM status on new mortgage loans. Under the final rule, the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition can continue to be used until October 1, 2022, the new mandatory compliance date of the revised General QM loan definition. As a result, the final rule's direct market impacts will occur only during the period between July 1, 2021 and October 1, 2022. The impact analyses assume the GSEs will remain in conservatorship for the duration of this period, and, therefore, that the conservatorship condition in the Temporary GSE QM loan definition will not trigger its expiration.

Under the baseline, when the Temporary GSE QM loan definition and the original, DTI-based General QM loan definition expire on July 1, 2021, conventional loans could only receive QM status under the Bureau's rules by underwriting according to the revised General QM

requirements, Small Creditor QM requirements, Balloon Payment QM requirements, the expanded portfolio QM amendments created by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act,⁷⁵ or the Seasoned QM definition.⁷⁶ The revised General QM loan definition, which will be the only type of QM available at origination to all creditors following the mandatory compliance date, generally requires loans to be priced less than 2.25 percentage points above APOR.⁷⁷

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

The Bureau's analysis of the market under the baseline focuses on loans priced 2.25 percentage points or higher above APOR that are either Under-43-Percent-DTI conventional loans or GSE-eligible loans because the Bureau estimates most loans newly

⁷⁵ Pub. L. 115-174, 132 Stat. 1296 (2018).

⁷⁶ Other than the mandatory compliance date delay implemented by this final rule, the Bureau's analysis assumes an otherwise identical market and policy environment under both the baseline and the final rule. As such, estimates under both the baseline and final rule assume the same effects of any separate policy proposals, including the Bureau's pending proposal to amend certain provisions of Regulation X to assist borrowers affected by the COVID-19 pandemic, which was published in the *Federal Register* on April 9, 2021. The Bureau notes in this respect that it expects any interactions of the pending proposal and this final rule to be both difficult to quantify and very limited relative to the direct effects of this final rule.

⁷⁷ The comparable thresholds are 6.5 percentage points over APOR for loans priced under \$66,156, 3.5 percentage points over APOR for loans priced under \$110,260 but at or above \$66,156, and 6.5 percentage points over APOR for loans for manufactured housing priced under \$110,260. 12 CFR 1026.43(e)(2)(vi)(A) through (D).

obtaining QM status due to the final rule fall within those categories. A smaller number of GSE-eligible loans will not fall within the revised General QM loan definition because they do not satisfy the consider and verify requirements in the revised General QM loan definition. The Bureau lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of GSE-eligible loans that do not satisfy the consider and verify requirements in the revised General QM loan definition. These loans are largely restricted to certain streamlined refinance loans offered by the GSEs, and the Bureau estimates that in the current market such loans are considerably less numerous than Under-43-Percent-DTI conventional loans and GSE-eligible loans priced 2.25 percentage points or higher above APOR.⁷⁸ However, demand for such loans could increase if housing market conditions deteriorate.

D. Benefits and Costs to Covered Persons and Consumers

1. Benefits to Consumers

The primary benefit to consumers of the final rule is the availability of conventional QM loans priced 2.25 percentage points or higher above APOR—including both Under-43-Percent-DTI conventional loans and GSE-eligible loans—during the period from July 1, 2021 to October 1, 2022. The Bureau uses HMDA data to estimate the number of loans that would not have been QM under the baseline, but would have been QM under the final rule due to their eligibility for either the original, DTI-based General QM loan definition or the Temporary GSE QM loan definition.⁷⁹ Relative to the baseline, the Bureau estimates that between July 1, 2021 and

⁷⁸ As of Q4 2020, only 140 loans had been originated through the GSEs' High-LTV Refinance Option since the inception of the program. See FHFA Foreclosure Prevention and Refinance Report (Q4 2020), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/4Q2020FPR.pdf>.

⁷⁹ Specifically, among HMDA loans originated in 2018, the Bureau estimates that approximately 2,200 loans per month would have been QM under the original, DTI-based General QM loan definition or the Temporary GSE QM

October 1, 2022, approximately 33,000 additional consumers will obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the final rule due to the availability of the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition.⁸⁰ While many of these consumers may have obtained mortgages of some kind under the baseline, the largest benefits to consumers accrue to the consumers who will obtain a conventional QM loan under the final rule but would not have obtained a mortgage under the baseline.

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

2. Benefits to Covered Persons

The final rule's primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating QM loans priced 2.25 percentage points or higher above APOR, particularly Under-43-Percent-DTI conventional loans and GSE-eligible loans. For the

loan definition due to DTI ratios at or below 43 percent or purchase by a GSE, but would not have been QM under the revised, price-based General QM loan definition due to rate spreads over APOR exceeding the applicable price thresholds. Multiplying this estimate by the 15-month length of the mandatory compliance date delay yields the Bureau's total estimate of 33,000.

⁸⁰ This estimate assumes that the GSEs continue to originate loans priced 2.25 percentage points or higher above APOR between July 1, 2021 and October 1, 2022. If the GSEs do not originate loans above the General QM Final Rule's pricing thresholds during this period, the Bureau estimates that approximately 28,000 additional consumers would obtain conventional QM loans priced 2.25 percentage points or higher above APOR under the proposal. This estimate reflects possible impacts of the rule if the GSE PSPAs prevent the GSEs from purchasing loans above the pricing thresholds established in the General QM Final Rule.

estimated 33,000 additional conventional QM loans priced 2.25 percentage points or higher above APOR under the final rule, the Bureau estimates an average loan size of \$190,000 and thus a total loan volume of \$6.3 billion. Under the baseline, after July 1, 2021, creditors would have been unable to originate such loans under the original, DTI-based General QM loan definition or the Temporary GSE QM loan definition and would instead have had to originate such loans as FHA, Small Creditor QM, or non-QM loans, or originate at a price at or below 2.25 percentage points over APOR as General QM loans. Creditors' current preference for originating QM loans priced 2.25 percentage points or more over APOR likely reflects advantages in a combination of costs or guarantee fees (particularly relative to FHA loans), liquidity (particularly relative to Small Creditor QM), or litigation and credit risk (particularly relative to non-QM). Moreover, QM loans are exempt from the Dodd-Frank Act risk retention requirement whereby creditors that securitize mortgage loans are required to retain at least 5 percent of the credit risk of the security, which adds significant cost. As a result, the final rule conveys benefits to mortgage creditors originating General QM and Temporary GSE QM loans on each of these dimensions.

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

3. Costs to Consumers

For the duration of the July 1, 2021 to October 1, 2022 period, creditors that would have reduced prices on some loans to satisfy the revised General QM loan definition under the baseline may delay reducing loan prices under the final rule. This is likely to occur for some

uncertain fraction of the estimated 33,000 additional conventional loans within the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition. Consumers obtaining such loans will pay higher prices for these conventional QM loans relative to the baseline.

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

4. Costs to Covered Persons

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

5. Other Benefits and Costs

In delaying the expiration of the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition, the 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 revised General QM loan definition represent a potential new market for private securitizations. Thus, the final rule will slightly reduce the scope of the potential non-QM market for the duration of the mandatory compliance date delay, likely lowering profits and revenues for participants in the

private secondary market. This will effectively be a transfer from these private secondary market participants to participants in the agency secondary market.

E. Specific Impacts of the Final Rule

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

The 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 non-depository creditors. Those smaller creditors originating portfolio loans can originate Small Creditor QM loans priced 2.25 percentage points or higher above APOR, and thus may rely less on the original, DTI-based General QM loan definition and the Temporary GSE QM loan definition for originating such loans. If the General QM Final Rule's mandatory compliance date will confer a competitive advantage to these small creditors in their origination of loans priced 2.25 percentage points or higher above APOR, the final rule will delay this outcome.

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

The final rule's expected impact on consumers in rural areas is similar or slightly larger than the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that loans priced 2.25 percentage points or higher above APOR that are either Under-43-Percent-DTI conventional loans or GSE-eligible loans reflect a slightly larger share of the conventional loan market in rural areas (0.8 percent) relative to non-rural areas (0.6 percent).⁸¹

⁸¹ 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.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA),⁸² as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,⁸³ requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.⁸⁴

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.⁸⁵ 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.⁸⁶

In the 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 proposal on small entities. The Bureau does not expect the final rule to impose costs on small entities relative to the baseline. Under the baseline, on July 1, 2021, the Temporary GSE QM loan

⁸² 5 U.S.C. 601 *et seq.*

⁸³ Pub. L. 104-121, tit. II, 110 Stat. 857 (1996).

⁸⁴ 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).

⁸⁵ 5 U.S.C. 603 through 605.

⁸⁶ 5 U.S.C. 609.

definition and the original, DTI-based General QM loan definition expire, and therefore no creditor—including small entities—would have been able to originate QM loans under either definition after that date. Under the final rule, small entities that would otherwise not have been able to originate QM loans under these definitions will be able to originate such loans with QM status until October 1, 2022. Thus, the Bureau anticipates that the final rule will only reduce burden on small entities relative to the baseline.

Accordingly, the Acting Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),⁸⁷ Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The 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. 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.

⁸⁷ 44 U.S.C. 3501 *et seq.*

VIII. Congressional Review Act

Pursuant to the Congressional Review Act,⁸⁸ 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).

IX. Signing Authority

The Acting Director of the Bureau, David Uejio, 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*.

List of Subjects

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

Authority and Issuance

For the reasons set forth in the preamble, the Bureau 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.*

2. In supplement I to part 1026:

⁸⁸ 5 U.S.C. 801 *et seq.*

- a. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*, revise introductory paragraph 2;
- b. Under section *43(e)(2) Qualified mortgage defined—general*, add paragraph 1; and
- c. Revise section *43(e)(4) Qualified mortgage defined—other agencies*.

The revisions and addition read as follows:

Supplement I to Part 1026—Official Interpretations

* * * *

Section 1026.43—Minimum standards for transactions secured by a dwelling

* * * *

2. *General QM Amendments Effective on March 1, 2021.* The Bureau’s revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after March 1, 2021 (effective date). Compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after October 1, 2022 (mandatory compliance date). For a given transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: with 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the 2021 General QM Amendments. For transactions subject to § 1026.19(e), (f), or (g), creditors determine the date the creditor received the consumer’s application, for purposes of this comment, in accordance with § 1026.2(a)(3)(ii). For transactions that are not subject to § 1026.19(e), (f), or (g), creditors can determine the date

the creditor received the consumer's application, for purposes of this comment, in accordance with either § 1026.2(a)(3)(i) or (ii).

* * * *

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

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

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

1. *General.* The Department of Housing and Urban Development, Department of Veterans Affairs, and the Department of Agriculture have promulgated definitions for qualified mortgages under mortgage programs they insure, guarantee, or provide under applicable law. Cross-references to those definitions are listed in § 1026.43(e)(4) to acknowledge the covered transactions covered by those definitions are qualified mortgages for purposes of this section.

2. *Mortgages for which the creditor received the consumer's application prior to October 1, 2022.* Covered transactions that met the requirements of § 1026.43(e)(2)(i) through (iii), were eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), and for which the creditor received the consumer's application prior to the mandatory compliance date of October 1, 2022, continue to be qualified mortgages for the purposes of this section, including those covered transactions that were consummated on or after October 1, 2022.

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

4. [Reserved].

5. [Reserved].

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Dated: April 26, 2021.

/s/ Laura Galban

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.