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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Creates New Category of Qualified Mortgages – Seasoned QM

In the December 29, 2020 issue of the *Federal Register* (85 FR 86402, [click here](#)), the Consumer Financial Protection Bureau (CFPB) published a final rule that creates a new category of qualified mortgages in §1026.43(e)(7) for first-lien, fixed-rate covered transactions that have met certain performance requirements, are held in portfolio by the originating creditor or first purchaser for a 36-month seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements, called a “Seasoned QM”.

The final rule is effective on March 1, 2021 and applies only to covered transactions for which creditors receive an application on or after March 1, 2021 (*see* preamble statement on page 86440 of the above hyperlinked section of the *Federal Register*).

Below is a brief summary of the final rule taken from its *Federal Register* preamble.

A Seasoned QM, including a higher-priced Seasoned QM, receives a safe harbor from the ability-to-repay (ATR) liability at the end of a 36 month seasoning period if it satisfies the product restrictions, points-and-fees limits, and underwriting requirements, and meets performance and portfolio requirements during the seasoning period, as summarized below.

A Seasoned QM must meet the following product restrictions:

1. The loan is secured by a first lien;
2. The loan has a fixed rate, with regular, substantially equal periodic payments that are fully amortizing and no balloon payments;
3. The loan term does not exceed 30 years; and
4. The loan is not a high-cost mortgage as defined in §1026.32(a).

A Seasoned QM’s total points and fees must not exceed the amounts specified in §1026.43(e)(3).

A Seasoned QM’s creditor must consider the consumer’s DTI ratio or residual income, income or assets other than the value of the dwelling, and the consumer’s debts and verify the consumer’s income or assets other than the value of the dwelling and the consumer’s debts, using the same consider and verify requirements established for General QMs in the General QM Final Rule also published in the December 29, 2020 issue of the *Federal Register* ([click here](#)).

A Seasoned QM must meet certain performance requirements at the end of the seasoning period. Specifically, a Seasoned QM must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period. Creditors may, however, generally accept payments that are deficient by \$50 or less if there are no more than three such deficient payments treated

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as not delinquent during the seasoning period. Under the final rule, funds taken from escrow in connection with the covered transaction and funds paid on behalf of the consumer by the creditor, servicer, or assignee of the covered transaction (or any other person acting on their behalf) are not considered in assessing whether a periodic payment has been made or is delinquent.

The final rule defines the seasoning period as a 36-month period beginning on the date on which the first periodic payment is due, except that: (1) if there is a delinquency of 30 days or more at the end of the 36th month, the seasoning period does not end until there is no delinquency; and (2) the seasoning period does not include any period during which the consumer is in a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, as defined by the final rule, provided that during or at the end of the temporary payment accommodation there is a qualifying change, as defined by the final rule, or the consumer cures the loan's delinquency under its original terms. If during or at the end of the temporary payment accommodation there is a qualifying change or the consumer cures the loan's delinquency under its original terms, the seasoning period consists of the period from the date on which the first periodic payment was due to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months.

The final rule defines a temporary payment accommodation in connection with a disaster or pandemic related national emergency as temporary payment relief granted to a consumer due to financial hardship caused directly or indirectly by a presidentially declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or a presidentially declared pandemic-related national emergency under the National Emergencies Act. Examples of a temporary payment accommodation in connection with a disaster or pandemic-related national emergency include, but are not limited to a trial loan modification plan, a temporary payment forbearance program, or a temporary repayment plan.

The final rule defines a qualifying change as an oral or written agreement entered into during or after a temporary payment accommodation in connection with a disaster or pandemic related national emergency that ends any preexisting delinquency and meets the following additional conditions to ensure the loan remains affordable: (1) the amount of interest charged over the full term of the loan does not increase as a result of the agreement; and (2) the servicer does not charge any fee in connection with the agreement and waives all late charges, penalties, stop payment fees or similar charges incurred during the temporary payment accommodation and during the delinquency that led to the temporary payment accommodation, as applicable.

A Seasoned QM must be held by the creditor in portfolio until the end of the seasoning period. The final rule includes several exceptions to this portfolio requirement that are similar to the exceptions to the Small Creditor QM portfolio requirement under the ATR/QM Rule. The final rule also includes an additional exception for a single transfer during the seasoning period. In that event, the final rule requires the purchaser to hold the Seasoned QM in portfolio until the end of the seasoning period.

To implement the Seasoned QM, the final rule makes the following amendments to §1026.43 and its Official Interpretations in Supplement I to Part 1026:

- Amend §1026.43 by revising paragraphs (e)(1) and (e)(2) introductory text and adding paragraph (e)(7);
- Amend the Official Interpretations in Supplement I to Part 1026 by revising paragraph 43(e)(1) *Safe harbor and presumption of compliance*; removing paragraph 43(e)(1)(i) *Safe harbor for transactions that are not higher-priced covered transactions*; adding paragraph 43(e)(1)(i)(A) *Safe harbor for transactions that are not higher-priced covered transactions*; adding the heading 43(e)(7) *Seasoned Loans*; and adding paragraphs 43(e)(7)(i)(A), 43(e)(7)(iii), 43(e)(7)(iv)(A), 43(e)(7)(iv)(A)(2), 43(e)(7)(iv)(B), 43(e)(7)(iv)(C)(2), and 43(e)(7)(iv)(D) after paragraph 43(e)(5).

This memorandum does not address every aspect of the final rule creating a Seasoned QM category in the ATR/QM Rule and readers should also read the text of the final rule on pages 86452 through 86455 of the above hyperlinked section of the *Federal Register*.

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