



October 30, 2020

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Extends Sunset Date for Temporary GSE Qualified Mortgages

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In the October 26, 2020, issue of the *Federal Register* (85 FR 67938, [click here](#)) the Consumer Financial Protection Bureau (CFPB) published a Final Rule that extends the January 10, 2021, sunset date in §1026.43(e)(4)(iii)(B) of Regulation Z for qualified mortgages (QMs) eligible to be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (individually, GSE, and collectively, GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA), pursuant to §1026.43(e)(4)(ii)(A) (Temporary GSE QM loans). The GSEs are currently under FHFA conservatorship.

The Final Rule is effective December 28, 2020.

The Final Rule amends §1026.43(e)(4)(iii)(B) to replace the January 10, 2021, sunset date for Temporary GSE QM loans with a provision stating that the Temporary GSE QM loan definition will be available only for covered loans for which the creditor receives the consumer’s application before the mandatory compliance date of final amendments to the General QM loan definition in §1026.43(e)(2) and that are consummated on or before the date the applicable GSE (or any limited-life regulatory entity succeeding the GSE’s charter) ceases to operate under the conservatorship or receivership of the FHFA.

This means that on the mandatory compliance date of the amended General QM loan definition (*i.e.*, the date creditors no longer may use the current General QM definition and are required to use the amended General QM loan definition), the Temporary GSE QM loan definition will expire, except for the above Temporary GSE QM loans for which the creditor receives the consumer’s application before the mandatory compliance date and are consummated on or before the date the applicable GSE (or any limited-life regulatory entity succeeding the GSE’s charter) exits FHFA conservatorship.

For purposes of §1026.43(e)(4)(iii)(B), the Final Rule clarifies the meaning of “application” by adding new comment 43(e)(4)–4, which provides that, for Temporary GSE QM loans that are not subject to TRID, creditors can determine the date the creditor received the consumer’s application in accordance with the definition of application in either §1026.2(a)(3)(i) or (ii). Of course, for Temporary GSE QM loans that are subject to TRID, creditors must use the definition of application in §1026.2(a)(3)(ii).

The Final Rule does not amend the conservatorship-receivership provision in §1026.43(e)(4)(ii)(A), which provides that the Temporary GSE QM loan category will expire with respect to a GSE when that GSE (or any limited-life regulatory entity succeeding the GSE’s charter) ceases to operate under the conservatorship or receivership of the FHFA, even if that occurs before January 10, 2021.

Also, the Final Rule does not affect the QM definitions that apply to Federal Housing Administration (FHA), U.S. Department of Veterans Affairs (VA), U.S. Department of

Agriculture (USDA), or Rural Housing Service (RHS) QM loans because each of these agencies has issued its own QM rule. Thus, the QM definitions in §1026.43(e)(4)(ii)(B), (C), (D) and (E) applicable to them have expired.

The Final Rule's preamble (footnote 136) alerts creditors that the Final Rule's extension of the Temporary GSE QM loan definition's sunset date does not apply to the temporary points-and-fees cure provision for qualified mortgages in §1026.43(e)(3)(iii), which is also set to expire on January 10, 2021.

The CFPB's Executive Summary of the Final Rule ([click here](#)) states: "Additionally, the expiration of the Temporary GSE QM category will not affect the QM status of a loan if the creditor made the loan or received the consumer's application for the loan prior to the extended sunset date. Thus, if a creditor receives an application for a loan prior to the expiration of the Temporary GSE QM category and that loan satisfies the criteria for Temporary GSE QMs, the loan will be a Temporary GSE QM for the remainder of the loan's term."

In the preamble to the Final Rule (footnote 131), the CFPB states "it does not intend to issue a final rule amending the General QM loan definition early enough for it to take effect before April 1, 2021" However, in the July 10, 2020, *Federal Register* (85 FR 41716), the CFPB published a proposed rule to amend the General QM loan definition, which is the subject of this firm's July 31, 2020, memorandum posted on our website at <https://www.bmandg.com/> under the Resources page.

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