



Attorneys At Law

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

**Partners**

Gregory S. Graham <sup>1</sup>

Shawn P. Black <sup>2</sup>

Ryan Black <sup>3</sup>

**Senior Lawyers**

David F. Dulock

Diane M. Gleason

Daniel S. Engle <sup>4</sup>

Margaret A. Noles

**Associates**

Nick Stevens <sup>5</sup>

Sydney Davis

Mehreen Nadeem

Ambria Wilmore

**Of Counsel**

David M. Tritter

Calvin C. Mann, Jr.

Thomas E. Black, Jr. <sup>6</sup>

**Retired Partner(s)**

Calvin C. Mann, Jr.

Thomas E. Black, Jr. <sup>6</sup>

<sup>1</sup> Also Licensed in Georgia

<sup>2</sup> Also Licensed in Kentucky and New York

<sup>3</sup> Also Licensed in District of Columbia

<sup>4</sup> Also Licensed in New York

<sup>5</sup> Also Licensed in Oklahoma

<sup>6</sup> Also Licensed in New York and Washington

March 3, 2022

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Issues Prepaid Interest Factsheet for Use in Price-based General QM APR Calculations

This memorandum notifies those clients who make or will make qualified mortgages (QM) subject to the price-based General QM definition in §1026.43(e)(2) where the QM interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due (*i.e.*, adjustable-rate mortgages (ARMs) and step-rate loans), that on February 23, 2022, the CFPB issued a Factsheet ([click here](#)) addressing how prepaid interest (a/k/a per diem interest) factors into the calculation of the APR for a QM under the price-based General QM definition in §1026.43(e)(2) of Regulation Z.

Please note, unlike the price-based General QM definition, the Factsheet is not a regulation; it is a Compliance Aid and, as such, is not subject to mandatory compliance (*see* [85 FR 4579](#)).

For a loan to satisfy the price-based General QM definition, the loan’s APR cannot exceed the average prime offer rate (APOR) for a comparable transaction by the applicable amount set forth in §1026.43(e)(2)(vi) of Regulation Z; and the creditor must treat the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan when determining that APR.

Because, under Regulation Z, a loan’s APR includes any prepaid interest, the Factsheet explains that this maximum interest rate is also used to calculate prepaid interest (positive or negative) when determining a price-based General QM’s APR, even if the creditor uses a different rate for calculating prepaid interest due or credited at consummation.

The Factsheet and the price-based General QM definition do not apply to QMs defined in paragraphs (e)(4), (e)(5), (e)(6), (e)(7) and (f) of §1026.43 of Regulation Z.

For ARM and step-rate loans subject to the price-based General QM definition, the actual APR used for disclosure purposes (*e.g.*, Loan Estimate and Closing Disclosure) is not used to determine if the APR on these loans does or does not exceed the applicable threshold in §1026.43(e)(2)(vi). This is because §1026.43(e)(2)(iv) states that the five-year maximum rate required for price-based General QMs is used by the creditor for underwriting these loans.

**This Memorandum is provided as general information regarding the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice, and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.**