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September 1, 2020 (REV. September 22, 2020)

**CFPB extends the comment period until October 1, 2020.**

**To:** Clients and Friends

**From:** David F. Dulock

**Subject**: CFPB Proposes Creation of New Category of Qualified Mortgages

In the August 28, 2020 issue of the *Federal Register* (85 FR 53568, *click here*), the Consumer Financial Protection Bureau (CFPB) published a proposed rule, with a request for public comment, that would create a new category of qualified mortgages in §1026.43(e)(7) for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements, called a "Seasoned QM".

Comments on the proposed rule must be received by the CFPB on or before October 1, 2020 ~~September 28, 2020~~, be identified by Docket No. CFPB–2020–0028 or RIN 3170–AA98, include the CFPB's name and be submitted by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: 2020-NPRM-SeasonedQM@cfpb.gov.* Include Docket No. CFPB–2020–0028 or RIN 3170–AA98 in the subject line of the message.

• *Mail/Hand Delivery/Courier:* Comment Intake—Seasoned QM, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Under the proposed rule, a covered transaction would receive a safe harbor from the ability to repay liability at the end of the 36-month seasoning period as a Seasoned QM if it satisfies the proposed rule's product restrictions, points-and-fees limits, and underwriting requirements, and it meets performance and portfolio requirements during the seasoning period. Below is a summary of the proposed rule taken from its *Federal Register* preamble:

- A Seasoned QM would have to meet the following product restrictions:
  1. The loan is secured by a first lien;
  2. The loan has a fixed rate, with fully amortizing payments and no balloon payment;
  3. The loan term does not exceed 30 years; and
  4. The total points and fees do not exceed specified limits.

- The creditor would be required to consider the consumer's DTI ratio or residual income and verify the consumer's debt obligations and income. The proposed rule would not specify a DTI limit, nor would it require the creditor to use Appendix Q in calculating and verifying debt and income.

- For a loan to be seasoned, the creditor would be required to hold it in portfolio until the end of the seasoning period. The proposed rule generally defines the seasoning period as a period of 36 months beginning on the date on which the first periodic payment is due after consummation. However, if there is a delinquency of 30 days or more at the end of the final month of the seasoning period, the seasoning period would be extended until there is no delinquency.

*(2 pages)*

- Failure to make full contractual payments would not disqualify a loan from eligibility to become a Seasoned QM if the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, if certain conditions are met. However, time spent in such a temporary accommodation would not count towards the 36-month seasoning period, and the seasoning period would only resume after the temporary accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change. The proposed rule defines a qualifying change as an agreement entered into during or after a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency that ends any preexisting delinquency and meets certain other conditions to ensure the loan remains affordable.

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

- Amend §1026.43 by revising paragraph (e)(1) and the introductory text of paragraph (e)(2); 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)(i)(B), 43(e)(7)(iii), 43(e)(7)(iv)(A), 43(e)(7)(iv)(A)(2), 43(e)(7)(iv)(C)(2), and 43(e)(7)(iv)(D) after paragraph 43(e)(5).

The text of the above proposed amendments to §1026.43 and its Official Interpretations in Supplement I to Part 1026 are found on pages 53602 through 53604 of the *Federal Register* section hyperlinked to this memorandum.