



Financial Services & Products ADVISORY ■

FEBRUARY 24, 2021

CFPB Delays Implementation of General QM Rule and May Jettison the “Seasoned QM” Rule

by [Stephen Ornstein](#)

In a [statement](#) issued on February 23, 2021, the Consumer Financial Protection Bureau (CFPB) indicated that it intends to delay the general qualified mortgage (QM) rule’s mandatory July 1, 2021 compliance date and may amend or revoke the “seasoned QM rule” that was supposed to become effective on March 1, 2021.

Background

As [we previously reported](#), on December 10, 2020, the CFPB issued two significant rulemakings. In the first, known as the general QM rule, the CFPB terminated the “QM Patch” and significantly revised the criteria for what constitutes a QM loan. Notably, in this rule, the CFPB replaced the dreaded Appendix Q and strict 43% debt-to-income underwriting threshold with a priced-based QM loan definition. The rule was to take effect on March 1, 2021, with compliance not mandatory until July 1, 2021. The QM Patch will expire on the earlier of July 1, 2021 or the date that the government-sponsored enterprises (GSEs) exit conservatorship.

In the second rulemaking, known as the “seasoned QM rule,” the CFPB issued an innovative final rulemaking that creates a pathway to “safe harbor” QM status for performing non-QM and “rebuttable presumption” QM loans that meet certain performance criteria portfolio requirements over a seasoning period of at least 36 months and that satisfy certain product restrictions, points and fees limits, and underwriting requirements before consummation. The seasoned QM rule was to become effective for applications received on or after March 1, 2021.

The CFPB’s Intension to Delay Compliance Date of the General QM Final Rule

The CFPB expects to issue a proposed rulemaking that would delay the July 1, 2021 mandatory compliance date of the general QM rule ostensibly to “ensure consumers have the options they need during the pandemic ... as well as to provide maximum flexibility to the market.” The impact of this rulemaking is significant because, if implemented, lenders will have the option of originating QM loans under the new general QM rule standards or, *alternatively*, adhering to the preexisting QM rules that require, among other things,

This alert is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

that the loans be underwritten to Appendix Q with a hard 43% debt-to-income ratio or be eligible for sale to Fannie Mae or Freddie Mac.

Notably, the CFPB anticipates that the QM Patch will remain in effect until the new mandatory compliance date—unless the GSEs exist conservatorship before that date.

Further, the CFPB indicated that at a later date it may initiate another rulemaking to “reconsider other aspects of the General QM Final Rule.”

The CFPB Will Amend or Reject the Seasoned QM Rule

In its statement, the CFPB ominously noted that it may initiate a new rulemaking to “revisit” the seasoned QM rule. The CFPB indicated that if promulgated, this rulemaking would consider whether “any potential final rule revoking or amending the Seasoned QM Final Rule should affect covered transactions for which an application was received during the period from March 1, 2021, until the effective date of such a final rule.”

Takeaways

The CFPB issued the general QM rule and the seasoned QM rule in the waning days of the Trump Administration, and the Biden CFPB clearly wants to reexamine these rulemakings. While it is likely that in the short term the general QM rule will be implemented as enacted, albeit with a delayed mandatory compliance date, it is possible that the CFPB could ultimately amend the rule at a later date. It is also noteworthy that the impact of this delay will be an extension of the controversial QM Patch.

By contrast, the CFPB is likely to substantively amend the seasoned QM rule or jettison the rulemaking altogether. In the comments to the final seasoned QM rule, consumer groups opposed not only significant aspects of the rule but also the concept of a seasoned QM. These groups will likely have a sympathetic ear in the Biden CFPB, and hence the rule faces an uncertain fate at best.

Please contact **Steve Ornstein** at 202.239.3844 or stephen.ornstein@alston.com with questions.

You can subscribe to future *Financial Services & Products* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any member of our [Financial Services & Products Group](#).

Nanci Weissgold
202.239.3189
nanci.weissgold@alston.com

Morey Barnes Yost
202.239.3674
morey.barnesyost@alston.com

Anoush Garakani
202.239.3091
anoush.garakani@alston.com

Stephen Ornstein
202.239.3844
stephen.ornstein@alston.com

Ross Speier
404.881.7432
ross.speier@alston.com

William Carpenter
202.239.3275
william.carpenter@alston.com

Brian Johnson
202.239.3271
brian.johnson@alston.com

Rinaldo Martinez
202.239.3205
rinaldo.martinez@alston.com

Melissa Sanchez Malpass
202.239.3731
melissa.malpass@alston.com

John C. Redding
213.576.1133
john.redding@alston.com

Lisa Lanham
212.210.9527
lisa.lanham@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2021

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86.10.85927500
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
 CHARLOTTE: One South at The Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 FORT WORTH: 3700 Hulen Street ■ Building 3 ■ Suite 150 ■ Fort Worth, Texas, USA, 76107 ■ 214.922.3400 ■ Fax: 214.922.3899
 LONDON: 5th Floor ■ Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
 RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
 SILICON VALLEY: 1950 University Avenue ■ Suite 430 ■ East Palo Alto, California, USA 94303 ■ 650.838.2000 ■ Fax: 650.838.2001
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333