April 2021

Ability-to-Repay and Qualified Mortgage Rule

Small entity compliance guide

Consumer Financial Protection Bureau

Version log

The Bureau periodically updates this guide. Below is a version log noting the history of this document and its updates:

Date	Version	Summary of Changes
April 2021	3.1	Updated to reflect the extension of the mandatory compliance date for the General QM Final Rule (Sections 1, 2.2, 4, 4.3, 4.3.1, 4.3.2, 4.5.1). Revised the discussion of the Temporary GSE QM definition (Section 4.5.1).
February 2021	3.0	Updated to reflect the amendments set forth in the GSE Patch Extension Final Rule, General QM Final Rule, and Seasoned QM Final Rule as follows: ▪ Revised the introduction, overview and the discussion of the effective date to include the final rules (Sections 1, 2, and 2.2); ▪ Revised the section discussing verification of income under the general ATR standard to note that a creditor is required to confirm that an inflow of funds into a consumer's account are the consumer's personal income if the creditor relies on those funds in making an ability-to-repay determination (Section 3.3.2); ▪ Added an introduction to the section discussing General QMs (Section 4.3); ▪ Revised the discussion of the debt-to-income based General QM definition to account for the General QM Final Rule (Section 4.3.1);

Date	Version	Summary of Changes
		▪ Created a new section to discuss the price-based General QM definition (Section 4.3.2); ▪ Created a new section to discuss the Seasoned QM category (Section 4.4); ▪ Divided the discussion of the Temporary QMs into two subsections (Section 4.5); ▪ Revised the discussion of the Temporary GSE QM to include the GSE Patch Extension Final Rule (Section 4.5.1); and ▪ Updated the discussion of the Temporary QMs due to the issuance of the separate QM rules by various government agencies (Section 4.5.2). Updated to note that the guide is a Compliance Aid under the Bureau's Policy Statement on Compliance Aids (Section 1.1). Updated to include current information on locating additional compliance resources (Section 1.2). Revised and re-organized the discussion of the general ATR standard (Section 3). Revised and re-organized the discussion of qualified mortgages (Section 4). Revised and moved the discussion of prepayment penalties into a new section (Section 6). Updated various sections to reflect current formatting for small entity compliance guides. Revised various sections to clarify that most obligations under the ATR/QM Rule apply to creditors.

Date	Version	Summary of Changes
		Revised internal cross references in various sections to refer to section numbers instead of page numbers. Deleted outdated information related to implementation of the initial ATR/QM Rule. Made miscellaneous and administrative changes in various sections.
March 28, 2016	2.4	The Bureau issued a final rule, the September 2015 Final Rule, amending certain mortgage rules, and the March 2016 Interim Final Rule to: ▪ Revise the definitions of small creditor and rural area. ▪ Amend the requirements to make QM's for small creditors. ▪ Establish a grace period to allow a creditor that does not meet the small creditor origination limit or asset limit in the preceding year to operate as a small creditor for mortgage transactions with applications received before April 1 of the current calendar year if it meets the limits in the calendar year before the preceding calendar year. ▪ Establish a grace period to allow a small creditor that did not meet the test for operating in a rural or underserved area in the preceding calendar year to operate as a small rural creditor for mortgage transactions with applications received prior to April 1 of the current calendar year if it met the rural or underserved test in the calendar year before the preceding calendar year.

Date	Version	Summary of Changes
		Temporary QM Provision. The Federal Housing Administration (FHA) and the U.S. Department of Veterans Affairs (VA) have each issued their own QM rules. Therefore, the section of the guide that addresses this has been modified.
November 3, 2014	2.3	The Bureau published a final rule amending certain mortgage rules to ▪ amend the existing exemption from the ability-to-repay rule for nonprofit entities that meet certain requirements; and ▪ provide a cure mechanism for the points and fees limit that applies to qualified mortgages.
January 8, 2014	2.2	Miscellaneous Administrative Changes.
October 17, 2013	2.1	*Points-and-Fees Calculation: Loan Originator Compensation.* Clarifies for retailers of manufactured homes and their employees what compensation must be counted as loan originator compensation and thus included in the points and fees thresholds for qualified mortgages and high-cost mortgages. ▪ *Points and Fees Calculation: Non-consumer payments.* Clarifies the treatment of payments made by the creditor or a seller or other third party, rather than by the consumer, for purposes of what must be included in the points and fees thresholds for qualified mortgages and high-cost mortgages. *Period to be considered when making Small Creditor status determination after January 10, 2016.* Changes the look back period for rural and underserved lending activity

Date	Version	Summary of Changes
		that is used in the definition of Small Creditor, effective January 10, 2016.
August 14, 2013	2.0	*Exemptions:* Creditors with certain designations, loans pursuant to certain programs, certain nonprofit creditors, and mortgage loans made in connection with certain Federal emergency economic stabilization programs are exempt from ability to repay requirements. *Qualified Mortgages (QMs):* Additional definition of a qualified mortgage for loans held in portfolio by small creditors. *Qualified Mortgages:* Transitional definition of creditors eligible to originate Balloon-Payment Qualified Mortgages. *Qualified Mortgages:* Shifts the annual percentage rate (APR) threshold for Small Creditor and Balloon-Payment QMs from 1.5 percentage points above the average prime offer rate (APOR) on first-lien loans to 3.5 percentage points above APOR. *Points-and-Fees Calculation:* Modifies the requirements regarding the inclusion of loan originator compensation in the points-and-fees calculation. *Qualified Mortgages:* Clarifies how eligibility will be determined for QMs under the temporary provision allowing QM status for loans eligible for purchase, guaranty, or insurance by the GSEs or certain federal agencies. *Qualified Mortgages:* Amends and clarifies how debt and income will be determined under appendix Q for the purpose of meeting the 43% DTI requirement under the general QM provision.

Date	Version	Summary of Changes
April 30, 2013	1.0	Original Document.

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1. Introduction

In the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress adopted ability-to-repay (ATR) requirements for virtually all closed-end residential mortgage loans. Congress also established a presumption of compliance with the ATR requirements for certain categories of mortgages, called Qualified Mortgages (QMs).

In January 2013, the Consumer Financial Protection Bureau (Bureau) adopted a final rule (January 2013 Final Rule) that implements the Dodd Frank Act's ATR/QM provisions and prepayment penalty limits. In May, July, and October 2013 and in October 2014, the Bureau issued final rules amending certain provisions of the January 2013 Final Rule. In September 2015 and March 2016, the Bureau issued rules further amending certain small creditor provisions. In October 2020, the Bureau issued a final rule extending an existing, temporary category of QMs for loans eligible for purchase or guarantee by the government-sponsored enterprises (GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency. In December 2020, the Bureau issued final rules creating a new category of QMs called Seasoned QMs and amending an existing category of QMs, General QMs. On April 27, 2021, the Bureau issued a final rule extending the mandatory compliance date of the December 2020 final rule that amended the General QM definition from July 1, 2021 to October 1, 2022. This guide uses the term "ATR/QM Rule" or "Rule" to refer to the January 2013 Final Rule as amended by these additional rules.

Separately, in section 101 of the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), Congress provided protection from liability for insured depository institutions and insured credit unions with assets below $10 billion with respect to certain ATR requirements regarding residential mortgage loans.[1] Specifically, the protection from liability is available if a loan: (1) is originated by and retained in portfolio by the institution, (2) complies with requirements regarding prepayment penalties and points and fees, and (3) does not have any negative amortization or interest-only features. Further, for the protection from liability to apply, the institution must consider and document the debt, income, and financial resources of the consumer. Section 101 of EGRRCPA also provides that the protection from liability is not available in the event of legal transfer except for transfers: (1) to another person by reason of

[1] EGRRCPA section 101, 15 U.S.C. 1639c(b)(2)(F).

bankruptcy or failure of a covered institution; (2) to a covered institution that retains the loan in portfolio; (3) in the event of a merger or acquisition as long as the loan is still retained in portfolio by the person to whom the loan is sold, assigned, or transferred; or (4) to a wholly owned subsidiary of a covered institution, provided that, after the sale, assignment, or transfer, the loan is considered to be an asset of the covered institution for regulatory accounting purposes. Section 101 did not require rulemaking to be effective and, as of February 2021, the Bureau has not engaged in rulemaking addressing this category of QM loans. Further discussion of section 101 of EGRRCPA therefore is beyond the scope of this guide, which focuses specifically on the ATR/QM Rule.

1.1 Scope of this guide

This guide focuses on the ATR/QM Rule. Except when specifically needed to explain the Rule, this guide does not discuss other laws, regulations, or regulatory guidance that may apply. The content of this guide does not include any rules, bulletins, guidance, or other interpretations issued or released after the date on the guide's cover page. Additionally, except as noted in the introduction in Section 1, this guide does not discuss protections from liability separately provided by Congress under section 101 of the EGRRCPA.

This guide meets the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 with regard to the ATR/QM Rule and is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/, that explains the Bureau's approach to Compliance Aids.

Users of this guide should review the ATR/QM Rule as well as this guide. The ATR/QM Rule is available at www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/ability-repay-qualified-mortgage-rule/.

1.2 Additional resources

Additional resources to help industry understand and comply with the ATR/QM Rule are available on the Bureau's website at www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/ability-repay-qualified-mortgage-rule/. You may also sign up on this website for an email distribution list that the Bureau will use to announce additional resources as they become available.

If you have a specific regulatory interpretation question about the ATR/QM Rule after reviewing these resources, you can submit the question to the Bureau on its website at reginquiries.consumerfinance.gov. Bureau staff provides only informal responses to regulatory inquiries, and the responses do not constitute official interpretations or legal advice. Bureau staff is not able to respond to specific inquiries within a particular requested timeframe. Actual response times will vary based on the number of questions Bureau staff is handling and the amount of research needed to respond to a specific question.

2. Overview of the ATR/QM Rule

The ATR/QM Rule requires a creditor to make a reasonable and good-faith determination of a consumer's ability to repay at or before consummation of a covered mortgage loan. A creditor complies with this ATR requirement if the creditor satisfies the Rule's general ATR standard when originating a loan. Additionally, the creditor is presumed to comply with the ATR requirement with regard to a particular loan the creditor originates if the loan satisfies the criteria to be a QM pursuant to the Rule.

To satisfy the ATR/QM Rule's general ATR standard, a creditor must consider eight factors:

- The consumer's current or reasonably expected income or assets (other than the value of the dwelling and attached real property securing the loan);
- The consumer's employment status, if the creditor relies on income from employment in determining the consumer's ATR;
- The consumer's monthly mortgage loan payment;
- The consumer's monthly payment for mortgage-related obligations (*e.g.*, property taxes, homeowner's association and condominium fees, and certain ongoing expenses that are related to the mortgage loan and required by the creditor);
- The consumer's monthly payments on simultaneous loans that are secured by the same property;
- The consumer's current debt obligations, alimony, and child-support payments;
- The consumer's monthly debt-to-income ratio or residual income; and
- The consumer's credit history.

> The ATR/QM Rule does not ban any particular loan features or transaction types, but a particular loan to a particular consumer is not permissible if the creditor does not make a reasonable, good-faith determination that the consumer has the ability to repay. For example, it is no longer possible to originate loans based on stated income. Additionally, the Rule has specific requirements and limitations related to loans with certain nontraditional features.

The creditor must also verify information it relied on when making its ATR determination. The Rule's general ATR standard is discussed in Section 3.

The ATR/QM Rule provides a presumption that a creditor has complied with the ATR requirement if the creditor originates a QM. In exchange for meeting certain requirements, QMs receive either a conclusive or a rebuttable presumption that the creditor complied with the ATR/QM Rule's requirements. Except for Seasoned QMs, the type of presumption depends on the pricing of the loan, *i.e.*, whether the loan is not higher-priced or is higher-priced. The Rule's provisions related to QMs are discussed in Section 4.

A creditor is not required to comply with the Rule's ATR requirements if the creditor satisfies the Rule's conditions for the refinancing of a non-standard mortgage loan to a standard mortgage loan. The conditions for this exception are discussed in Section 5.

The ATR/QM Rule implements other provisions of the Dodd-Frank Act that limit prepayment penalties. The Rule's limits on prepayment penalties are discussed in Section 6.

2.1 Coverage

The ATR/QM Rule applies to almost all closed-end consumer credit transactions secured by a dwelling including any real property attached to the dwelling. 12 CFR 1026.43(a). This means that the Rule generally applies to loans made to consumers and secured by residential structures that contain one to four units, including condominiums and co-ops. *See* 12 CFR 1026.2(a)(19). Unlike some other mortgage rules, the ATR/QM Rule is not limited to first-lien loans or to loans secured by a primary residence.

The ATR/QM Rule's ATR requirements only apply to a loan modification if it is a refinancing under Regulation Z, 12 CFR 1026.20. *See* comment 43(a)-1. For information on how the ATR/QM Rule applies to assumptions, see the Bureau's 2014 interpretive rule, 79 Fed. Reg. 41631 (July 17, 2014).

However, some specific categories of loans are excluded from the Rule's ATR requirements. Specifically, the Rule's ATR requirements do not apply to any of the following:

- Open-end credit plans (home equity lines of credit or HELOCs) subject to 12 CFR 1026.40. However, a loan may not be structured as open-end credit to evade the Rule's ATR requirements. 12 CFR 1026.43(h).
- Timeshare plans.
- Reverse mortgages subject to 12 CFR 1026.33.
- Temporary or bridge loans with terms of 12 months or less (with possible renewal).
- A construction phase of 12 months or less (with possible renewal) of a construction-to-permanent loan.
- Loans secured by vacant land.

12 CFR 1026.43(a).

In addition, certain types of creditors or loan programs may be exempt from the ATR/QM Rule's ATR requirements. *See* 12 CFR 1026.43(a)(3)(iv) through (vi). Extensions of credit made by any of the following creditors are exempt from the ATR/QM Rule's ATR requirements:

- Creditors designated by the U.S. Department of the Treasury as Community Development Financial Institutions.
- Creditors designated by the U.S. Department of Housing and Urban Development (HUD) as either a Community Housing Development Organization or a Downpayment Assistance Provider of Secondary Financing, under certain conditions.
- Creditors designated as nonprofit organizations under section 501(c)(3) of the Internal Revenue Code of 1986 that extend dwelling-secured credit no more than 200 times annually, provide dwelling-secured credit only to low-to-moderate income consumers, and follow their own written procedures to determine that consumers have a reasonable ability to repay their loans. Note that some subordinate liens are not counted towards the 200-credit extension limit. *See* 12 CFR 1026.43(a)(3)(vii).

12 CFR 1026.43(a)(3)(v).

Extensions of credit made by housing finance agencies directly to consumers, as well as extensions of credit made by other creditors pursuant to a program administered by a housing finance agency, are exempt from the ATR requirements. This ATR exemption applies to extensions of credit made pursuant to a program administered by a housing finance agency, regardless of the funding source (*e.g.*, federal, state, or other sources). 12 CFR 1026.43(a)(3)(iv).

Extensions of credit made pursuant to an Emergency Economic Stabilization Act program, such as extensions of credit made pursuant to a State Hardest Hit Fund program, are also exempt from the ATR requirements. 12 CFR 1026.43(a)(3)(vi).

The exemptions above apply to all loans made by these creditors or pursuant to these loan programs, provided the conditions for the exemption are satisfied. An exempt loan remains exempt even if it is sold, assigned, or otherwise transferred to a creditor that would not qualify for the exemption. The ATR/QM Rule's ATR requirements do not apply to these loans. Thus, a loan that is eligible for one of these exemptions is not eligible for QM status, as the QM provisions are only applicable to loans subject to the Rule's ATR requirements. A consumer who obtained a loan that was exempt would have no ATR claim under the Rule.

2.2 Effective date

The ATR/QM Rule originally took effect on January 10, 2014. The Bureau has—from time to time—issued rule updates that have different effective dates. Most recently, the Bureau issued the Patch Extension Final Rule, the General QM Final Rule, and the Seasoned QM Final Rule. The Patch Extension Final Rule took effect on December 28, 2020. The General QM Final Rule and the Seasoned QM Final Rules are effective on March 1, 2021. However, compliance with the General QM Final Rule is not mandatory until October 1, 2022. See Sections 4.3 through 4.5 of this Guide for more information.

2.3 Record retention

The ATR/QM Rule requires creditors to retain evidence of compliance with the ATR/QM Rule, including the prepayment penalty limits, for three years after consummation. 12 CFR 1026.25(c)(3). Creditors may want to keep records for a longer period, and nothing in the Rule prohibits them from doing so.

3. General ATR standard

Section 3.1 provides general information about the general ATR standard and making a reasonable and good-faith determination of a consumer's ability to repay a loan. Section 3.2 sets forth the eight factors a creditor must consider when making a reasonable and good-faith determination of a consumer's ability to repay a covered mortgage loan. Section 3.3 discusses the use of reasonably reliable third-party records to verify the information used to make a reasonable and good-faith determination of a consumer's ability to repay.

3.1 Determining ATR

The general ATR standard requires a creditor to make a reasonable and good-faith determination of a consumer's ability to repay at or before consummation of a covered mortgage loan. 12 CFR 1026.43(c)(1). However, the ATR/QM Rule does not provide comprehensive underwriting standards for creditors to use when making such a determination. As long as creditors consider the eight factors discussed in Section 3.2 and verify the information that they relied on when considering those factors as discussed in Section 3.3, creditors are permitted to develop their own underwriting standards and make changes to those standards over time in response to empirical information and changing economic and other conditions. *See* comment 43(c)(1)-1.i.

To help creditors incorporate the ATR concepts into their operations, the Bureau has prepared some examples that illustrate how internal policies can influence ATR determinations. The list below is not a comprehensive list of all the ways underwriting guidelines might measure ATR. Each creditor must look at the issue of ATR in the context of the facts and circumstances relevant to the applicable market, the creditor's organization, and the creditor's individual consumers.

Creditors should check their policies and procedures to ensure that they incorporate consideration of each of the eight factors. However, the ATR/QM Rule does not require validation of underwriting criteria using mathematical models.

Given these caveats, here are some of the types of factors that may show that an ATR determination was reasonable and in good faith:

- Underwriting standards: The creditor used standards to underwrite the transaction that have historically resulted in comparatively low rates of delinquency and default during adverse economic conditions.
- Payment history: The consumer paid on time for a significant time after origination or reset of an adjustable-rate mortgage.

Comment 43(c)(1)-1.ii.

Among the types of factors that may show that an ATR determination was not reasonable and in good faith:

- Underwriting standards: The creditor ignored evidence that its underwriting standards are not effective at determining consumers' repayment ability.

- Inconsistency: The creditor applied underwriting standards inconsistently or used underwriting standards different from those it used for similar loans without having a reasonable justification.

- Payment history: The consumer defaults early in the loan, or shortly after the loan resets, without having experienced a significant financial challenge or life-altering event.

Comment 43(c)(1)-1.ii.

If a consumer has trouble repaying a loan, the consumer could claim that the creditor violated the ATR/QM Rule by failing to make a reasonable, good-faith determination of their ATR before making the loan. However, the ATR determination applies to information known at or before consummation. For example, a reduction in the consumer's income due to a job loss that cannot be reasonably anticipated at or before origination is not relevant to determining compliance with the ATR/QM Rule. Comment 43(c)(1)-2.

There is a three-year statute of limitations on ATR claims brought as affirmative cases. Additionally, after the statute of limitations on affirmative ATR claims expires, consumers can bring ATR claims as setoff/recoupment claims in a defense to foreclosure.

The reasonableness and good faith of a determination of ATR depends on the facts and circumstances relevant to the particular loan. For example, a particular ATR determination may be reasonable and in good faith even though the consumer defaulted shortly after consummation if, for example, the consumer experienced a sudden and unexpected loss of income. Comment 43(c)(1)-1.

If the records the creditor reviews indicate there will be a change in the consumer's repayment ability after consummation (for example, the consumer plans to retire and not obtain new employment or plans to transition from full-time to part-time work), the creditor must consider that information. Comment 43(c)(1)-2. However, the creditor may not make inquiries or verifications prohibited by Regulation B. Comment 43(c)(1)-3.

3.2 Eight ATR underwriting factors

To satisfy the general ATR standard, a creditor must consider the following eight factors at or before consummation of a covered mortgage loan:

1. *The consumer's current or reasonably expected income or assets (other than the value of the dwelling and attached real property that secures the loan) that the consumer will rely on to repay the loan.* Income does not have to be income from full-time employment or salaried income to be considered in an ATR determination. A creditor can consider seasonal or bonus income, rental income, commissions, interest payments, dividends, retirement benefits, trust income, public assistance payments, alimony, child support, and other sources of income. Comment 43(c)(2)(i)-1. A creditor can also consider future income if a creditor verifies it is using reasonably reliable third-party records. *See* comment 43(c)(2)(i)-3. A creditor may also consider assets other than the value of the dwelling and any attached real property that secures the loan. For example, a creditor may consider funds in a savings account, amounts vested in a retirement account, stocks, bonds, certificates of deposit, and amounts available to the consumer from a trust fund. Comment 43(c)(2)(i)-1.

> Creditors must retain evidence that they considered the eight factors, to comply with the ATR/QM Rule's record retention requirement. *See* 12 CFR 1026.25(c)(3).

2. *The consumer's current employment status (if a creditor relies on employment income when assessing the consumer's ability to repay).* A creditor can consider many types of employment to make an ATR determination, including full-time, part-time, seasonal, irregular, military, and self-employment. Comment 43(c)(2)(ii)-1. A creditor must consider the characteristics of the consumer's type of employment.

3. *The monthly mortgage payment for the loan that the creditor is underwriting.* The creditor generally must calculate this monthly mortgage payment using the introductory or fully indexed interest rate, whichever is higher, and monthly, fully amortizing payments that

are substantially equal. Additional information on calculating monthly mortgage payments is in Section 3.2.1.

4. *The monthly payment on any simultaneous loans secured by the same dwelling.* Additional information on calculating payments for simultaneous loans is in Section 3.2.2.

5. *Monthly mortgage-related obligations.* These obligations include expected property taxes, fees and special assessments imposed by a condominium, cooperative, or homeowner's association, ground rent, certain lease payments, and certain insurance premiums and similar charges that are required by the creditor. *See* 12 CFR 1026.43(b)(8) and related commentary.

6. *The consumer's current debts, alimony, and child-support obligations.* Examples of current debts include student loans, auto loans, revolving debt, and existing mortgages not being paid off at or before consummation. Comment 43(c)(2)(vi)-1. Creditors have significant flexibility to consider current debt obligations in light of facts and circumstances, including that an obligation is likely to be paid off soon after consummation. Similarly, creditors should consider whether debt obligations in forbearance or deferral at the time of underwriting are likely to affect the consumer's ability to pay after the expiration of the forbearance or deferral period. Comment 43(c)(2)(vi)-1. When two or more consumers apply as joint obligors with primary liability on a loan, a creditor must consider the debt obligations of both of them in assessing their ability to repay the loan. However, the creditor does not have to consider the debt obligations of someone who is merely a guarantor or surety on the loan. Comment 43(c)(2)(vi)-2. See the discussion in comment 43(c)(3)-3 regarding when it is appropriate to disregard information in a credit report because it is disputed or inaccurate.

7. *The consumer's monthly debt-to-income (DTI) ratio or residual income.* The monthly DTI ratio or residual income must be calculated using the total of all of the mortgage and non-mortgage obligations listed above, compared to total monthly income. Additional information on calculating the DTI ratio and residual income is in Section 3.2.3.

8. *The consumer's credit history.* Credit history might include information about number and age of credit lines, payment history, judgments, collections, bankruptcies, and nontraditional credit references, such as rental payment history or utility payments. *See* comment 43(c)(2)(viii)-1. While the ATR/QM Rule requires that the creditor consider the consumer's credit history, it does not prescribe a particular type of credit history to consider or prescribe specifically how to evaluate the credit history information. 12 CFR 1026.43(c)(2)(viii); comment 43(c)(2)(viii)-1. When two or more consumers apply as joint obligors with primary liability on a loan, a creditor must consider the credit histories of both

of them in assessing their ability to repay the loan. However, the creditor does not have to consider the credit history of someone who is merely a guarantor or surety on the loan. Comment 43(c)(2)(viii)-2. See the discussion in comment 43(c)(3)-3 regarding when it is appropriate to disregard information in a credit report because it is disputed or inaccurate.

12 CFR 1026.43(c)(2).

The ATR/QM Rule does not preclude a creditor from considering additional factors when making a determination of a consumer's ability to repay a loan but requires a creditor to consider at least these eight factors in order to satisfy the Rule's general ATR standard.

3.2.1 Calculating payments under the ATR standard for the covered mortgage loan being originated

Generally, the creditor calculates the monthly payment on the covered mortgage loan for ATR purposes using the greater of the fully indexed rate or the introductory rate and substantially equal monthly payments that would fully amortize the loan. 12 CFR 1026.43(c)(5). Payments are substantially equal if, for example, no two monthly payments vary by more than 1 percent. For loans paid quarterly or annually, the creditor must convert the payments into monthly payments for purposes of determining ATR. Comment 43(c)(5)(i)-3.

However, there are also special rules and guidance provided for certain types of loans:

- For balloon loans, the calculation depends on whether the loan is a higher-priced loan. Higher-priced loans are generally defined as having an annual percentage rate (APR) that, as of the date the interest rate is set, exceeds the Average Prime Offer Rate (APOR) by 1.5 percentage points or more for first-lien loans and 3.5 percentage points or more for subordinate-lien loans. 12 CFR 1026.43(b)(4). APOR is published weekly at www.ffiec.gov/ratespread. For non-higher-priced balloon loans, the monthly payment used for ATR purposes is the maximum payment scheduled during the first five years after the first regular periodic payment comes due. 12 CFR 1026.43(c)(5)(ii)(A)(*1*). For higher-priced balloon loans, the monthly payment used for ATR purposes is the maximum payment in the payment schedule, including any balloon payment. 12 CFR 1026.43(c)(5)(ii)(A)(*2*).

- For interest-only loans, the creditor calculates the monthly payment using the greater of the fully indexed or introductory rate and substantially equal, monthly payments of principal and interest that will repay the outstanding loan amount on the date the loan recasts over the remaining term of the loan. 12 CFR 1026.43(c)(5)(ii)(B).

- For negative-amortization loans, the creditor calculates the monthly payment using the maximum loan amount (which will include the potential added principal assuming the consumer makes the minimum required payments until the date the loan recasts), the greater of the fully indexed or introductory rate, and substantially equal monthly payments of principal and interest that will repay that maximum loan amount on the date the loan recasts over the remaining term of the loan. 12 CFR 1026.43(c)(5)(ii)(C).

3.2.2 Calculating payments for simultaneous loans secured by the same property

If a creditor knows or has reason to know that there is going to be a simultaneous loan (such as a piggy-back loan or a silent second mortgage loan) made at or before the time the covered mortgage loan will be consummated, the creditor must consider the payment on the simultaneous loan in accordance with the following requirements:

- For simultaneous loans that are not HELOCs subject to 12 CFR 1026.40, the ATR assessment must include a monthly payment for the simultaneous loan that is calculated using the appropriate calculation method for covered mortgage loans as discussed in Section 3.2.1. 12 CFR 1026.43(c)(6)(i).

- For simultaneous loans that are HELOCs subject to 12 CFR 1026.40, the ATR assessment must include a payment for the simultaneous loan that is calculated based on the periodic payment required under the terms of the plan and the amount of credit to be drawn down at or before consummation of the covered mortgage loan. 12 CFR 1026.43(c)(6)(ii).

The creditor must also take into account any mortgage-related obligations for the simultaneous loan. 12 CFR 1026.43(c)(6).

3.2.3 Calculating and considering DTI ratio and residual income under the general ATR standard

The general ATR standard requires creditors to consider the consumer's DTI ratio or residual income but does not contain specific DTI ratio or residual income thresholds. 12 CFR 1026.43(c)(2)(vii) and (c)(7); comment 43(c)(7)-1.

When calculating the consumer's monthly income for purposes of the DTI ratio or residual income, a creditor can include earned income (*e.g.*, wages or salary), unearned income (*e.g.*, interest and dividends), and other regular payments to the consumer (*e.g.*, alimony, child support, or government benefits). 12 CFR 1026.43(c)(7)(i)(B). In all cases, the creditor must verify the amounts it relies upon to determine ATR. Additional information on verification is discussed in Section 3.3.

When calculating a consumer's monthly debt for purposes of the DTI ratio or residual income, the creditor will need to determine the consumer's total monthly payments for:

- The loan that the creditor is underwriting (calculated as discussed in Section 3.2.1);
- Any simultaneous loans secured by the same property (calculated as discussed in Section 3.2.2);
- Mortgage-related obligations (*e.g.*, property taxes, insurance required by the creditor, and certain other costs related to the property such as fees owed to a condominium, cooperative, or homeowner's association, ground rent or leasehold payments, and special assessments); and
- Current debt obligations, alimony, and child support.

12 CFR 1026.43(c)(7)(i)(A).

3.3 Verifying information using reasonably reliable third-party records

A creditor generally must verify the information it relies on when determining a consumer's repayment ability using reasonably reliable third-party records. 12 CFR 1026.43(c)(3) and (4).

The ATR/QM Rule defines third-party records to include, among other things, records prepared by an appropriate person other than the consumer, the creditor, the mortgage broker, or the creditor's or mortgage broker's agent. 12 CFR 1026.43(b)(13)(i). For example, a creditor generally cannot rely on what consumers say about their income. A creditor must verify a consumer's income using reasonably reliable third-party records such as W-2s or payroll statements. *See* 12 CFR 1026.43(c)(4) and related commentary.

A creditor may rely on third-party records a consumer provides as long as the records are reasonably reliable and specific to the consumer. 12 CFR 1026.43(b)(13); comments 43(c)(3)-1 and -2. The Rule defines third-party records to include, among other things, records prepared by the consumer, the creditor, the mortgage broker, or the creditor's or mortgage broker's agent, if the record is reviewed by an appropriate third party. Comment 43(b)(13)(i)-1. For example, a cattle rancher might provide an updated profit-and-loss statement for the current year to supplement tax returns from prior years. These records are reasonably reliable third-party records to the extent that an appropriate third party has reviewed them. For example, if a third-party accountant prepared or reviewed the cattle rancher's profit-and-loss statement, then a creditor can use the statement to verify the rancher's current income. Comment 43(b)(13)(i)-1.

While a creditor does not have to retain actual paper copies of records used in underwriting a transaction, the creditor must be able to reproduce such records accurately. For example, if a creditor uses a consumer's W-2 tax form to verify income, the creditor must be able to reproduce the form itself, not merely the income information that was contained in the form. Comment 25(c)(3)-1. Accordingly, a creditor can obtain records transmitted electronically, such as via email or a secure external Internet link to access information, if the creditor can retain or otherwise reproduce such records accurately during the three years the creditor must retain ATR records. Comment 43(b)(13)-1.

Although a creditor must verify the income it relies on to determine ATR, it is not required to verify income that it does not rely on to determine ATR. For example, if a consumer has a full-time job and a part-time job and the creditor uses only the income from the full-time job to determine the consumer's ability to repay, the creditor does not need to verify the income from the part-time job. Additionally, if two or more consumers apply for a mortgage, a creditor does not have to consider and verify both incomes—unless both incomes are required to qualify for the loan and demonstrate ability to repay the loan. 12 CFR 1026.43(c)(3) and (4); comments 43(c)(4)-1 and -2.

3.3.1 Verification of income, assets, and employment status

A creditor must use reasonably reliable third-party records to verify the amounts of income and assets that the creditor relies on when making its ATR determination. The following list provides some examples of records that a creditor may be able to use, but is not an exhaustive or all-inclusive list:

- Tax return transcript issued by the IRS;
- Copies of tax returns the consumer filed with the IRS or a state taxing authority;
- Federal, state, or local government agency letters detailing the consumer's income, benefits, or entitlements;
- W-2 forms or other IRS forms for reporting wages or tax withholding;
- Payroll statements, including military leave and earnings statements;
- Financial institution records, such as bank account statements or investment account statements reflecting the value of particular assets;
- Records from the consumer's employer or a third party that obtained consumer-specific income information from the employer;
- Check-cashing receipts; and
- Remittance-transfer receipts.

12 CFR 1026.43(c)(4) and related commentary.

> Copies of tax-return transcripts or payroll statements can be obtained directly from the consumer or from a service provider and need not be obtained directly from a government agency or employer, as long as the records are reasonably reliable and specific to the individual consumer. Comment 43(c)(3)-2.

> A creditor can also consider future income if a creditor verifies it is using reasonably reliable third-party records. For example, if a consumer accepts a job in March, but will not start until May, the creditor can consider the future expected income if the employer will confirm the job offer and salary in writing. Comment 43(c)(2)(i)-3.

A creditor is required to confirm that an inflow of funds into a consumer's account are the consumer's personal income if the creditor relies on those funds in making an ATR determination. For example, a creditor would not meet the verification requirements of the ATR/QM Rule if it observes an unidentified deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income and is not from another source, such as proceeds from a loan. Comment 43(c)(4)-4.

If a consumer has more income than, in the creditor's reasonable and good-faith judgment, is needed to repay the loan, the creditor does not have to verify the extra income. For example, if a consumer has both a full-time and a part-time job and the creditor reasonably determines that income from the full-time job is enough for the consumer to be able to repay the loan, the creditor does not have to verify income from the part-time job. 12 CFR 1026.43(c)(3) and (4); comment 43(c)(4)-1.

A creditor can document a consumer's employment status by calling the employer and getting oral verification, as long as the creditor maintains a record of the information obtained on the call. 12 CFR 1026.43(c)(3)(ii).

3.3.2 Verification of mortgage-related obligations

The following list provides some examples of records that a creditor may be able to use to verify mortgage-related obligations, but is not an exhaustive or all-inclusive list:

- Title report listing expected property taxes if the source of the information was a local taxing authority;
- Records from government organizations such as a tax authority or local government;
- Billing statement from a condominium, homeowner's or other association;
- Statement from the assessing entity (for example, a water district bill); and
- A current ground rent agreement or an existing lease agreement.

Comment 43(c)(3)-5.

3.3.3 Verification of debt obligations, child support, alimony, and simultaneous loans

Generally, a creditor does not need to obtain individual statements for each of a consumer's debts and can use a credit report to verify a consumer's debt obligations. However, a credit report does not serve as a reasonably reliable third-party record for purposes of verifying items that do not appear on the credit report. For example, certain monthly debt obligations, such as legal obligations like alimony or child support, may not be reflected on a credit report. Thus, a credit report that does not list a consumer's monthly alimony obligation does not serve as a reasonably reliable third-party record for purposes of verifying that obligation. Comment 43(c)(3)-3. Additionally, if a creditor knows or has reason to know that a credit report may be inaccurate in whole or in part, the creditor complies with the ATR/QM Rule by disregarding an inaccurate or disputed item, items, or credit report, but does not have to obtain additional third-party records. For additional information on verification of debt obligations using a credit report, see comments 43(c)(3)-3 and -6.

A credit report will not reflect a simultaneous loan that has not yet been consummated and may not reflect a loan that has just recently been consummated. If a creditor knows or has reason to know that there will be a simultaneous loan extended at or before consummation, the creditor may verify the simultaneous loan by obtaining third-party verification from the creditor of the simultaneous loan. For example, the creditor may obtain a copy of the promissory note or other written verification. Comment 43(c)(3)-4.

If the consumer lists a debt obligation that does not show up on the credit report, a creditor may accept the consumer's statement about the existence and amount of the obligation without further verification. 12 CFR 1026.43(c)(3)(iii).

3.3.4 Verification of credit history

Generally, a credit report is considered a reasonably reliable third-party record for verification of a consumer's credit history. However, if a creditor knows or has a reason to know that the information on a consumer's credit report may be inaccurate, the creditor can ignore it. For example, there might be a fraud alert or a dispute on the credit report, or the consumer may present other evidence that the creditor reasonably finds to be reliable and contradicts the credit report. In those cases, the creditor may choose to disregard the inaccurate or disputed items. Comment 43(c)(3)-3.

A creditor can verify credit history using reasonably reliable third-party records that show nontraditional credit references, such as rental payment history or utility payments. Comment 43(c)(3)-7.

4. Qualified mortgages

The ATR/QM Rule has several categories of QMs. All creditors are eligible to originate General QMs, which are discussed in Section 4.3, and loans that become Seasoned QMs, which are discussed in Section 4.4. However, only certain small creditors are eligible to originate Small Creditor QMs and Balloon-Payment QMs, which are discussed in Section 4.6. In addition to these four categories of QMs, the Rule has a temporary category of QMs, which expires on the earlier of October 1, 2022 or the date on which the government-sponsored enterprises (GSEs) exit conservatorship. A loan may qualify as a Temporary GSE QM only if the creditor receives the application for the loan before October 1, 2022 or the date the applicable GSE exists conservatorship, whichever occurs first. Additional information regarding Temporary QMs is available in Section 4.5. Criteria that apply to all QMs under the Rule are discussed in Sections 4.2 and 4.7.

Mortgage loans that satisfy the criteria for one or more categories of QMs set forth in the ATR/QM Rule are presumed to comply with the Rule's ATR requirements. If a QM is higher-priced (as defined in the Rule) and is not a Seasoned QM, the presumption of compliance is rebuttable. Otherwise, the presumption of compliance is conclusive (*i.e.*, the QM has a safe harbor from liability under the Rule). The presumptions of compliance are discussed in Section 4.1.

4.1 Presumptions of compliance

A mortgage loan that satisfies the criteria for one or more categories of QMs set forth in the ATR/QM Rule is presumed to comply with the Rule's ATR requirements. 12 CFR 1026.43(e)(1).

Generally, originating a loan as a QM provides the creditor with either a rebuttable or a conclusive presumption of compliance with the ATR/QM Rule's ATR requirement for that loan. Whether the presumption of compliance is rebuttable or conclusive generally depends on whether the QM is a higher-priced loan, as defined in the Rule. If the QM is a higher-priced loan, the creditor receives a rebuttable presumption of compliance for that loan. If the QM is not a higher-priced loan, the creditor receives a conclusive presumption of compliance for that loan. 12 CFR 1026.43(e)(1). However, if a loan is a Seasoned QM, the creditor receives a conclusive presumption of compliance regardless of whether the loan is a higher-priced loan. 12 CFR 1026.43(e)(1)(i)(B). For more information on these presumptions of compliance, see

Sections 4.1.1 and 4.1.2. For more information on determining whether a QM is a higher-priced loan, see Section 4.1.3.

4.1.1 Conclusive presumption of compliance (*i.e.*, safe harbor)

All Seasoned QMs and other QMs that are not higher-priced loans are conclusively presumed to comply with the ATR/QM Rule's ATR requirements (*i.e.*, the QM has a safe harbor from liability under the Rule). 12 CFR 1026.43(e)(1)(i).

Under the safe harbor, if a court finds that a loan is a QM, then that finding conclusively establishes compliance with the ATR/QM Rule's ATR requirements.

For example, a consumer could claim that a creditor did not make a reasonable and good-faith determination of repayment ability when it originated a loan subject to the ATR/QM Rule. If a court finds that the loan is a Seasoned QM or is another type of QM and is not a higher-priced loan, the consumer would lose this claim.

The consumer could attempt to show that the loan is not a QM, and therefore is not presumed to comply with the ATR requirements. However, if the loan is indeed a QM and is not higher-priced, the consumer has no recourse under the ATR/QM Rule.

4.1.2 Rebuttable presumption of compliance

QMs (other than Seasoned QMs) that are higher-priced loans provide the creditor with a rebuttable presumption of compliance with the ATR requirements, but that presumption can be rebutted. 12 CFR 1026.43(e)(1)(ii).

If a court finds that a loan is a QM (other than a Seasoned QM) and a higher-priced loan, a consumer can rebut the presumption that the creditor complied with ATR/QM Rule. However, to prevail on that argument, it must be proven that based on the information available to the creditor at the time the loan was made, the consumer did not have enough income or assets (other than the dwelling and any attached real property securing the loan) left to meet living expenses after paying the loan, any simultaneous loan of which the creditor was aware, mortgage-related expenses, alimony, child support, and other debts. 12 CFR 1026.43(e)(1)(ii); comment 43(e)(1)(ii)-1.

4.1.3 Higher-priced loans

A General QM or Temporary GSE QM is a higher-priced loan if:

- It is a first-lien mortgage for which, at the time the interest rate on the loan was set, the APR was 1.5 percentage points or more over the APOR for a comparable transaction.
- It is a subordinate-lien mortgage with an APR that, when the interest rate was set, exceeded the APOR for a comparable transaction by 3.5 percentage points or more.

12 CFR 1026.43(b)(4).

For example, if the APOR for a comparable transaction is 5 percent at the time when the interest rate on a mortgage is set, then a first-lien mortgage is higher-priced if it has an APR of 6.5 percent or more.

A Small Creditor QM or Balloon-Payment QM is a higher-priced loan if it has an APR that, when the interest rate was set, exceeded the APOR for a comparable transaction by 3.5 percentage points or more, for both first-lien and subordinate-lien mortgages. 12 CFR 1026.43(b)(4). For example, if the APOR for a comparable transaction is 5 percent at the time when the interest rate on a mortgage is set, a mortgage that is a Small Creditor Qualified Mortgage is higher-priced if it has an APR of 8.5 percent or more, regardless of whether it is first- or subordinate-lien loan.

Rate-spread calculators and other guidance are available online at http://www.ffiec.gov/ratespread/. They may be used to calculate the difference between a loan's APR and the APOR for a comparable loan.

This special definition of higher-priced loan for Small Creditor and Balloon-Payment QMs only determines whether a loan has a safe harbor or rebuttable presumption of compliance with the ATR requirements. It does not affect whether a loan is a "higher-priced mortgage loan" (HPML) under other Bureau rules and does not exempt a loan from other requirements for HPMLs.

4.2 Requirements that apply to all QMs under the ATR/QM Rule

The ATR/QM Rule has some requirements that are common across all types of QMs defined in the Rule. These requirements include:

- A prohibition on negative amortization or interest-only payments;
- A prohibition on loan terms in excess of 30 years; and
- Limits on points and fees. Additional information on the limits on points and fees is available in Section 4.7.

12 CFR 1026.43(e)(2) and (5)-(7).

4.3 General QMs

The ATR/QM Rule has permitted creditors to originate General QMs since January 1, 2014. However, on December 10, 2020, the Bureau issued a final rule, the General QM Final Rule, which amended the General QM definition. The General QM Final Rule is effective on March 1, 2021 but has a mandatory compliance date of October 1, 2022. Thus, a creditor must satisfy different criteria to originate a General QM depending on when a creditor receives an application for a covered mortgage loan. If a creditor received an application before March 1, 2021 (*i.e.*, the effective date of the General QM Final Rule), the creditor had to satisfy the criteria discussed in Section 4.3.1 (the DTI-based General QM definition) in order to originate a General QM. If a creditor receives an application between March 1, 2021 and September 30, 2022, the creditor may satisfy either the criteria discussed in Section 4.3.1 (the DTI-based General QM definition) or the criteria discussed in Section 4.3.2 (the price-based General QM definition) to originate a General QM. If a creditor receives an application on or after October 1, 2022 (*i.e.*, the mandatory compliance date for the General QM Final Rule), the creditor must satisfy the criteria in Section 4.3.2 (the price-based General QM definition) in order to originate a General QM.

4.3.1 DTI-based General QM definition

As noted above, if a creditor receives an application for a covered mortgage loan before March 1, 2021, the creditor must satisfy the criteria discussed in this Section 4.3.1 in order to originate a General QM. These criteria existed prior to the issuance of the General QM Final Rule on December 10, 2020 and remain available until September 30, 2022. If a creditor receives an application between March 1, 2021 and September 30, 2022, the creditor may satisfy either the criteria discussed in this Section 4.3.1 or the criteria discussed in Section 4.3.2. The criteria discussed in this Section 4.3.1 do not apply to applications received on or after October 1, 2022. See Section 4.3.2 for the General QM criteria that apply to applications received on or after October 1, 2022. *See also* comment 43-2.

In order for a loan to be a General QM pursuant to the definition that existed prior to the effective date of the General QM Final Rule, the creditor must:

- Underwrite based on a fully amortizing schedule using the maximum rate permitted during the first five years after the date of the first periodic payment;
- Consider and verify the consumer's income or assets, current debt obligations, alimony and child-support obligations; and
- Determine that the consumer's total monthly debt-to-income ratio is no more than 43 percent, using the definitions and other requirements provided in appendix Q to Regulation Z.

Additionally, General QMs must have regular periodic payments that are substantially equal (except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage) and may not have negative-amortization,

Although consideration and verification of a consumer's credit history is not specifically incorporated into the General QM definition, a creditor must verify a consumer's debt obligations using reasonably reliable third-party records, which may include use of a credit report or records that evidence nontraditional credit references.

When appendix Q does not resolve how a specific type of debt or income should be treated, creditors may rely on guidelines of the GSEs or certain federal agencies to resolve the issue. However, a creditor may not rely on GSE or agency guidelines where such guidelines are in conflict with appendix Q standards.

interest-only features, balloon-payment features, terms that exceed 30 years, or points and fees that exceed the specified limits as discussed in Section 4.7.

4.3.2 Price-based General QM definition

As noted above, the General QM Final Rule issued on December 10, 2020 is effective for applications received on or after March 1, 2021. For applications received on or after March 1, 2021, a creditor may use the revised General QM definition discussed in this Section 4.3.2 or the General QM definition discussed in Section 4.3.1 above to determine if a loan is a General QM. The mandatory compliance date for the General QM Final Rule is October 1, 2022. Thus, for applications received on or after October 1, 2022, creditors must use the criteria set forth in the revised definition and discussed in this Section 4.3.2 to determine if a loan is a General QM. *See* comment 43-2.

In order for a loan to be a General QM pursuant to the revised definition that is effective on March 1, 2021, the loan must meet a priced-based limit and certain underwriting criteria. Pursuant to the revised definition, a loan is a General QM only if the APR for the loan exceeds the APOR for a comparable transaction by less than the applicable threshold as of the date the interest rate is set. The thresholds for General QM status are:

- For a first-lien loan with a loan amount greater than or equal to $110,260, 2.25 percentage points;
- For a first-lien loan with a loan amount greater than or equal to $66,156 but less than $110,260, 3.5 percentage points;
- For a first-lien loan with a loan amount less than $66,156, 6.5 percentage points;
- For a first-lien loan secured by a manufactured home[2] with a loan amount less than $110,260, 6.5 percentage points;
- For a subordinate-lien loan with a loan amount greater than or equal to $66,156, 3.5 percentage points; and

> Manufactured home means any residential structure as defined under HUD regulations establishing manufactured home construction and safety standards. 24 CFR 3280.2. Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for this purpose.

[2] This threshold applies to first-lien loans of less than $110,260 (indexed for inflation) that are secured by a manufactured home and land, or by a manufactured home only. For a first-lien loan with a loan amount equal to or greater than $110,260 (indexed for inflation) that is secured by a manufactured home or a manufactured home and land, the threshold is 2.25 percentage points.

- For a subordinate-lien loan with a loan amount less than $66,156, 6.5 percentage points.

12 CFR 1026.43(e)(2)(vi).

If a loan's interest rate may or will change in the first five years after the date on which the first regular periodic payment will be due, the creditor must treat the highest interest rate that may apply during that five year period as the loan's interest rate for the entire loan term when determining the APR for purposes of these thresholds. 12 CFR 1026.43(e)(2)(vi).

In order for a loan to be a General QM pursuant to the revised definition that is effective on March 1, 2021, the creditor also must satisfy both of the following with regard to the loan:

- *Consider the consumer's current or reasonably expected income or assets (other than the value of the dwelling that secures the loan and any real property attached to that dwelling), debt obligations, alimony, child support, and monthly DTI ratio or residual income*. To meet this requirement for General QM status, the creditor must:
  - Take into account current or reasonably expected income or assets (other than the value of the dwelling that secures the loan and any real property attached to that dwelling), debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ATR determination;

    > A creditor may only consider amounts that it has verified in accordance with the verification requirements discussed in this Section 4.3.2.

  - Maintain written policies and procedures for how it takes into account income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ATR determination; and
  - Retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ATR, including how it applied its policies and procedures. Examples of such documentation may include an underwriter worksheet or a final automated underwriting system certification, in combination with the creditor's applicable underwriting standards and any applicable exceptions described in its policies and procedures, that shows how these required factors were taken into account in the creditor's ATR determination.
- *Verify the consumer's current or reasonably expected income or assets (other than the value of the dwelling that secures the loan and any real property attached to that*

> *dwelling) as well as the consumer's debt obligations, alimony, and child support.* A creditor must verify such amounts using reasonably reliable third-party records and reasonable methods and criteria. Creditors can meet the Rule's verification requirement either by satisfying this general standard or by complying with the verification standards in one or more[3] specified manuals. If the creditor meets the standards for verifying current or reasonably expected income or assets (other than the value of the dwelling securing the transaction) in one or more of the specified manuals, the creditor has a safe harbor for compliance with the General QM verification requirement. These standards include relevant provisions in specified versions of the Fannie Mae Single Family Selling Guide, the Freddie Mac Single-Family Seller/Servicer Guide, the FHA's Single Family Housing Policy Handbook, the VA's Lenders Handbook, and the USDA's Field Office Handbook for the Direct Single Family Housing Program and Handbook for the Single Family Guaranteed Loan Program. The General QM definition sets forth the specific provisions and versions of these manuals that creditors must use to obtain a safe harbor, and notes a creditor also obtains a safe harbor if it complies with revised versions of the manuals, provided that the two versions are substantially similar. To receive the verification safe harbor, the creditor need only comply with requirements in the manuals to verify income, assets, debt obligations, alimony and child support using specified reasonably reliable third-party records or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

12 CFR 1026.43(e)(2)(iv) and (v).

Additionally, General QMs must have regular periodic payments that are substantially equal (except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage) and may not have negative-amortization, interest-only features, balloon-payment features, terms that exceed 30 years, or points and fees that exceed the specified limits as discussed in Section 4.7. 12 CFR 1026.43(e)(2)(i) through (iii).

[3] Accordingly, a creditor may, but need not, satisfy the verify requirements by complying with the verification standards from more than one manual (in other words, by "mixing and matching" verification standards).

4.4 Seasoned QMs

The Seasoned QM category is available for loans for which a creditor receives an application on or after March 1, 2021.

Seasoned QMs must have regular, substantially equal periodic payments that are fully amortizing payments. A Seasoned QM may not have negative-amortization, interest-only payments, balloon-payment features, terms that exceed 30 years, or points and fees that exceed the specified limits as discussed in Section 4.7. 12 CFR 1026.43(e)(7)(i)(A) and (B).

Additionally, all of the following must be satisfied in order for a loan to be eligible to become a Seasoned QM:

- The loan must be a fixed-rate loan and secured by a first lien. If a loan is a subordinate-lien loan, an adjustable-rate loan, or a step-rate loan, the loan is not eligible to be a Seasoned QM.
- The loan must not be a high-cost mortgage as defined in Regulation Z, 12 CFR 1026.32(a).
- The creditor must satisfy the consider and verify requirements under the revised definition for General QMs. These requirements are discussed in Section 4.3.2.
- The loan 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. In determining whether a loan is a Seasoned QM, delinquency generally means the failure to make a periodic payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle by the date the periodic payment is due under the terms of the legal obligation. For more information about this definition of delinquency, see 12 CFR 1026.43(e)(7)(iv)(A).

> A periodic payment is 30 days delinquent when it is not paid before the due date of the following scheduled periodic payment.
>
> A periodic payment is 60 days delinquent if the consumer is more than 30 days delinquent on the first of two sequential scheduled periodic payments and does not make both sequential scheduled periodic payments before the due date of the next scheduled periodic payment after the two sequential scheduled periodic payments.

12 CFR 1026.43(e)(7)(i) and (ii).

Generally, the seasoning period is the 36-month period that begins on the date on which the first periodic payment is due after consummation. 12 CFR 1026.43(e)(7)(iv)(C). The end of the seasoning period occurs later in two situations:

- First, if there is a delinquency of 30 days or more at the end of the 36th month of the seasoning period, the seasoning period is extended until there is no delinquency.
- Second, time spent in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency does not count towards the seasoning period, provided that 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. For the definitions of qualifying change and temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, see 12 CFR 1026.43(e)(7)(iv)(B) and (D).

12 CFR 1026.43(e)(7)(iv)(C).

To become a Seasoned QM, the loan must also satisfy a portfolio requirement. 12 CFR 1026.43(e)(7)(iii). Generally, the loan must not be subject, at consummation, to a commitment to be acquired by another person, and the loan must not be sold, assigned, or otherwise transferred prior to the end of the seasoning period, except that:

- The loan may be transferred once before the end of the seasoning period provided that the loan is not securitized as part of the transfer or at any other time before the end of the seasoning period;
- The loan may be transferred pursuant to a supervisory action or agreement; and
- The loan may be transferred as part of a merger or acquisition of or by the creditor.

12 CFR 1026.43(e)(7)(iii).

4.5 Temporary QM Definitions

4.5.1 Temporary GSE QM Definition

The ATR/QM Rule extends QM status to certain loans that are originated during a transitional period if the loans are eligible for purchase or guarantee by Fannie Mae or Freddie Mac (the GSEs) while are under federal conservatorship or receivership and if the loans meet certain other requirements. This Temporary GSE QM category expires on the date that the GSEs exit federal conservatorship or receivership or on October 1, 2022, whichever occurs first. Loans that receive QM status under the Temporary GSE QM category will retain QM status after the Temporary GSE QM category expires.

While the ATR/QM Rule sets October 1, 2022 as the expiration date of the Temprary GSE QM definition, the availability of the Temporary GSE QM loan definition may be affected by policies or agreements created by parties other than the Bureau. For example, the Preferred Stock Purchase Agreements include restrictions on GSEs purchases that rely on the Temporary QM definition after July 1, 2021.[4]

Temporary GSE QMs must have regular periodic payments that are substantially equal (except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage) and may not have negative-amortization, interest-only features, balloon-payment features, terms that exceed 30 years, or points and fees that exceed the specified limits as discussed in Section 4.7. 12 CFR 1026.43(e)(4). Additionally, a loan must be eligible for purchase or guarantee by Fannie Mae or Freddie Mac while operating under federal conservatorship. However, the creditor does not have to satisfy GSE standards that are wholly unrelated to the credit risk or underwriting of the loan or any standards that apply after the consummation of the loan. Eligibility for purchase or guarantee by a GSE can be established based on any of the following methods:

- Valid recommendation from a GSE Automated Underwriting System (AUS) or an AUS that relies on an agency underwriting tool.

[4] *See* Section 5.14(c) of the PSPAs (Jan. 14, 2021), https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf.

- GSE guidelines contained in official manuals.
- Written agreements between a GSE and the creditor (or a direct sponsor or aggregator of the creditor).
- Individual loan waivers from a GSE.

4.5.2 QMs eligible to be purchased, insured or guaranteed by specified government agencies

Initially, the ATR/QM Rule had categories of QMs for loans that met certain criteria and were eligible to be purchased, insured, or guaranteed by specified government agencies. Under these QM categories, a loan was generally considered a QM if it was eligible to be insured or guaranteed under certain programs administered by the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), or the Department of Agriculture (USDA). The Rule provided that these QM categories would expire on the effective date of a rule issued by each respective agency to define QMs for its loan programs. All of the specified government agencies have since issued their own QM rules, and those rules have taken effect. Thus, these QM categories have expired. However, a loan that is defined as QM under any of these agencies' rules is a QM for purposes of the ATR/QM Rule. *See* comment 43(e)(4)-1.

4.6 QMs that only certain creditors are eligible to originate

In addition to the categories of QMs that all creditors are eligible to originate, there are two additional categories of QMs in the ATR/QM Rule that only small creditors are eligible to originate. *See* 12 CFR 1026.43(e)(5) and (f).

A creditor can make these categories of QMs only if it meets both of the following requirements:

- The creditor and its affiliates that regularly extended covered loans (*i.e.*, closed-end residential mortgage loans that are subject to the ATR requirements) in the last calendar year had assets below $2 billion (to be adjusted annually for inflation by the Bureau) at the end of the last calendar year; and

- The creditor and all its affiliates together originated no more than 2,000 first-lien covered loans in the preceding calendar year. A creditor is not required to count loans that the creditor originated and kept in portfolio or loans that an affiliate originated and kept in its portfolio.

12 CFR 1026.43(e)(5)(i)(D) and (f)(1)(vi). *See also* 12 CFR 1026.35(b)(2)(iii)(B) and (C).

The ATR/QM Rule has a grace period for creditors that no longer meet the small creditor origination limit or asset-size limit. If a creditor exceeded the asset-size or origination limit during the immediately preceding calendar year but met the limit in the calendar year before the immediately preceding year, the creditor can operate as a small creditor for purposes of originating QMs for applications received before April 1 of the current calendar year.

An affiliate is any company that controls, is controlled by, or is under common control with, the creditor. This generally means that a creditor's affiliates are its parent company, its subsidiaries, and its sister companies. For example, if a creditor is a bank owned by a bank holding company that also owns another bank, both the bank holding company and the other bank are the creditor's affiliates.

To determine if it meets the asset-size limit, a creditor counts its assets and the assets of its affiliates that, during the relevant period, regularly extended first-lien, closed-end mortgage loans subject to the ATR/QM Rule's ATR requirements.

To determine if it meets the originations limit, a creditor counts all first-lien, closed-end covered loans (*i.e.*, mortgage loans subject to the ATR/QM Rule's ATR requirements) originated by the creditor or one of its affiliates. A creditor does not count subordinate-lien mortgage loans or mortgage loans that are not subject to the ATR/QM Rule, such as HELOCs, time-share plans, reverse mortgages, or temporary or bridge loans with terms of 12 months or less.

4.6.1 Small Creditor QMs

Small Creditor QMs may not have negative-amortization, interest-only features, balloon-payment features, or terms that exceed 30 years. They may not have points and fees that exceed the specified QM limits discussed in Section 4.7. 12 CFR 1026.43(e)(5)(i)(A).

In addition, in order for a loan to be a Small Creditor QM:

- The creditor must underwrite the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years after the date of the first periodic payment.
- The loan must not be subject to a commitment made at or prior to consummation of a loan to sell the loan after consummation, other than to a creditor that itself is eligible to make Small Creditor QMs.
- The creditor must consider and verify the consumer's income or assets, and debts, alimony, and child support.
- The creditor must consider the consumer's DTI ratio or residual income, although the Small Creditor QM definition sets no specific threshold for DTI ratio or residual income.

12 CFR 1026.43(e)(5)(i).

A loan generally loses its Small Creditor QM status if the small creditor sells or otherwise transfers the loan less than three years after the loan's consummation. 12 CFR 1026.43(e)(5)(ii). However, a loan keeps its Small Creditor QM status if it meets one of these criteria:

- It is sold or otherwise transferred more than three years after consummation.
- It is sold or otherwise transferred to another small creditor, at any time.
- It is sold or otherwise transferred pursuant to a supervisory action or agreement, at any time.
- It is sold or otherwise transferred as part of a merger or acquisition of or by the creditor, at any time.

12 CFR 1026.43(e)(5)(ii).

4.6.2 Balloon-Payment QMs

Small creditors that operate in a rural or underserved area are eligible to make Balloon-Payment QMs. 12 CFR 1026.43(f)(1)(vi).

A creditor is eligible to originate Balloon-Payment QMs if the creditor is a small creditor (*i.e.*, satisfies the asset-size and originations limits), and operated in a rural or underserved area in the preceding calendar year. 12 CFR 1026.43(f)(1)(vi).

If a creditor is not a small creditor or did not operate in a rural or underserved area in the preceding calendar year, the creditor may be able to originate Balloon-Payment QMs during a grace period. A small creditor that did not operate in a rural or underserved area in the preceding calendar year can originate Balloon-Payment QMs for transactions with applications received prior to April 1 of the current calendar year if the small creditor operated in a rural or underserved area in the calendar year before the preceding calendar year. Similarly, a creditor that operated in a rural or underserved area in the preceding calendar year but that did not satisfy the small creditor origination limit or asset-size limit in the preceding calendar year can originate Balloon-Payment QMs for transactions with applications received before April 1 of the current calendar year if the creditor met the limit in the calendar year before the preceding calendar year.

Balloon-Payment QMs must not have negative-amortization or interest-only features and must comply with the points-and-fees limits discussed in Section 4.7. 12 CFR 1026.43(f)(1)(i).

In addition, a loan must satisfy all of the following criteria to be a Balloon-Payment QM:

- The loan must have a fixed interest rate and periodic payments (other than the balloon payment) that would fully amortize the loan over 30 years or less.
- The loan must have a term of five years or longer.
- The loan must not be subject to a commitment made at or prior to consummation of a loan to sell the loan after consummation, other than to a creditor that itself is eligible to make Balloon-Payment QMs.
- The creditor must determine that the consumer will be able to make the scheduled periodic payments (including mortgage-related obligations) other than the balloon payment. Unlike the calculation of balloon loan monthly payments for determining ATR, the Balloon-Payment QM calculation excludes the balloon payment even if the loan is a higher-priced loan.
- The creditor must consider and verify the consumer's income or assets, and debts, alimony, and child support.
- The creditor must consider the consumer's DTI ratio or residual income, although the Balloon-Payment QM definition sets no specific threshold for the DTI ratio or residual income.

12 CFR 1026.43(f)(1)(ii) through (v).

A loan generally loses its Balloon-Payment QM status if the creditor sells or otherwise transfers the loan less than three years after the loan's consummation. 12 CFR 1026.43(f)(2). However, a loan keeps its Balloon-Payment QM status if it meets one of these criteria:

- It is sold or otherwise transferred more than three years after consummation.
- It is sold or otherwise transferred to another small creditor operating in rural or underserved areas at any time.
- It is sold or otherwise transferred pursuant to a supervisory action or agreement at any time.
- It is sold or otherwise transferred as part of a merger or acquisition of or by the creditor at any time.

12 CFR 1026.43(f)(2).

4.7 Points-and-fees limits

For a loan to be a QM pursuant to the ATR/QM Rule, the points and fees may not exceed the points-and-fees limits. The points-and-fees limits are higher for smaller loans. Initially, the points-and-fees limits were:

- 3 percent of the total loan amount for a loan greater than or equal to $100,000;
- $3,000 for a loan greater than or equal to $60,000 but less than $100,000;
- 5 percent of the total loan amount for a loan greater than or equal to $20,000 but less than $60,000;
- $1,000 for a loan greater than or equal to $12,500 but less than $20,000; and
- 8 percent of the total loan amount for a loan less than $12,500.

12 CFR 1026.43(e)(3)(i).

The dollar amounts listed above are adjusted annually for inflation and published each year in the commentary to Regulation Z.[5] *See* 12 CFR 1026.43(e)(3)(ii) and accompanying commentary.

To determine whether a loan is within the QM points-and-fees limits, one may follow these steps:

- First, determine which of the limits applies to the loan amount on the face of the note.
- Second, calculate the maximum points and fees for that loan amount:
  - For a loan amount that has a fixed-dollar limit (for example, $3,000 for loan amounts of $60,000 but less than $100,000), that fixed-dollar cap is the maximum allowable points and fees.
  - For a loan amount that has a percentage limit (for example, 5 percent of the total loan amount for loan amounts greater than or equal to $20,000 but less than $60,000) determine the "total loan amount" for your transaction. The total loan amount equals the "amount financed" minus any points and fees that are rolled into the loan amount. Multiply the total loan amount by the percentage cap to determine the maximum allowable points and fees.
- Finally, calculate the total points and fees for the transaction. If the total points and fees for the transaction exceed the maximum allowable points and fees, then the loan is not a QM.

For certain transactions consummated on or before January 10, 2021, if the creditor or an assignee determines after consummation that the total points and fees exceed the applicable points and fees limit, the ATR/QM Rule allows the creditor or assignee to take certain steps within 210 days after consummation to cure the overage and maintain QM status. In order to cure an overage and maintain QM status, the creditor or assignee must maintain and follow

[5] For 2021, the points-and-fees limits are: (1) for a loan amount greater than or equal to $110,260: 3 percent of the total loan amount; (2) for a loan amount greater than or equal to $66,156 but less than $110,260: $3,308; (3) for a loan amount greater than or equal to $22,052 but less than $66,156: 5 percent of the total loan amount; (4) for a loan amount greater than or equal to $13,783 but less than $22,052: $1,103; and (5) for a loan amount less than $13,783: 8 percent of the total loan amount.

policies and procedures for post-consummation review of points and fees and for making payments to cure overages pursuant to the ATR/QM Rule. For more information, see 12 CFR 1026.43(e)(3)(iii) and (iv) and accompanying commentary.

4.7.1 Points-and-fees calculation

To calculate points and fees for the QM points-and-fees limits, use the same approach that is used for calculating points and fees for closed-end loans under the Home Ownership and Equity Protection Act (HOEPA) thresholds in the Bureau's High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X) rulemakings. 12 CFR 1026.43(e)(3)(i). Those rules are available online at www.consumerfinance.gov/regulations/.

Unless specified otherwise, include amounts that are known at or before consummation, even if the consumer pays them after consummation by rolling them into the loan amount.

In addition, unless specified otherwise, closing costs that a creditor pays and recoups from the consumer over time through the interest rate are not counted in points and fees.

To calculate points and fees, add together the amounts paid in connection with the transaction for the categories of charges listed below:

1. FINANCE CHARGE

In general, include all items included in the finance charge. 12 CFR 1026.4(a) and (b). However, the following types and amounts of charges may be excluded, even if they normally would be included in the finance charge:

- Interest or the time-price differential.
- Mortgage insurance premiums (MIPs).
- Federal or state government-sponsored MIPs. For example, exclude up-front and annual FHA premiums, VA funding fees, and USDA guarantee fees.
- Private mortgage insurance (PMI) premiums. Exclude monthly or annual PMI premiums. Up-front PMI premiums may be excluded if the premium is refundable on a prorated basis and a refund is automatically issued upon loan satisfaction. However,

even if the premium is excludable, one must include any portion that exceeds the up-front MIP for FHA loans. Those amounts are published in HUD Mortgagee Letters, which you can access on HUD's website at portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee/.

- Certain charges paid by a third party. A charge paid by a third party may be included in points and fees but is not included in points and fees under 12 CFR 1026.32(b)(1)(i) if the exclusions to points and fees in 12 CFR 1026.32(b)(1)(i)(A) through (F) apply. For example, seller's points are not included in points and fees under 12 CFR 1026.32(b)(1)(i) as they are not included in the finance charge. But they still may be included in points and fees under 12 CFR 1026.32(b)(1)(ii) through (vi)—for example, if they cover loan originator compensation, credit life insurance premiums, or a prepayment penalty.

- *Bona fide* third-party charges not retained by the creditor, loan originator, or an affiliate of either. 12 CFR 1026.32(b)(1)(i)(D). In general, *bona fide* third-party charges may be excluded even if they would be included in the finance charge. For example, a *bona fide* charge imposed by a third-party settlement agent (for example, an attorney) may be excluded so long as neither the creditor nor the loan originator (or their affiliates) retains a portion of the charge. However, third-party charges that are specifically required to be included under other provisions of the points-and-fees calculation must be included (for example, certain PMI premiums, certain real estate-related charges, and premiums for certain credit insurance and debt cancellation or suspension coverage). Note that up-front fees a creditor charges consumers to recover the costs of loan-level price adjustments imposed by secondary market purchasers of loans, including the GSEs, are not considered *bona fide* third-party charges and must be included in points and fees.

- *Bona fide* discount points. 12 CFR 1026.32(b)(1)(i)(E), 32(b)(1)(i)(F), and 32(b)(3). Exclude up to 2 *bona fide* discount points **if** the interest rate before the discount does not exceed the APOR for a comparable transaction by more than 1 percentage point; or exclude up to 1 *bona fide* discount point **if** the interest rate before the discount does not exceed the APOR for a comparable transaction by more than 2 percentage points.

A discount point is "*bona fide*" if it reduces the consumer's interest rate by an amount that reflects established industry practices, such as secondary mortgage market norms. An example is the pricing in the to-be-announced market for mortgage-backed securities.

2. LOAN ORIGINATOR COMPENSATION

Include compensation paid directly or indirectly by a consumer or creditor to a loan originator other than compensation paid by a mortgage broker, creditor, or retailer of manufactured homes to an employee. 12 CFR 1026.32(b)(1)(ii). Include compensation that is attributable to the transaction, to the extent that such compensation is known as of the date the interest rate for the transaction is set. 12 CFR 1026.32(b)(1)(ii). In general, include the following:

> In the context of determining what loan originator compensation must be included in points and fees, the term "mortgage broker" refers to both brokerage firms and individual brokers. Compensation paid by a mortgage broker to an employee is not included in points and fees.

- Compensation paid directly by a consumer to a mortgage broker: Include the amount the consumer pays directly to the mortgage broker. If this payment is already included in points and fees because it is included in the finance charge under 12 CFR 1026.32(b)(1)(i), it does not have to be included again as loan originator compensation under 12 CFR 1026.32(b)(1)(ii).

- Compensation paid by a creditor to a mortgage broker: Include the amount the creditor pays to the broker for the transaction. Include this amount even if the creditor included origination or other charges paid by the consumer to the creditor as points and fees under 12 CFR 1026.32(b)(1)(i) as a finance charge or if the creditor does not receive an up-front payment from the consumer to cover the broker's fee but rather recoups the fee from the consumer through the interest rate over time.

- Compensation paid by a consumer or creditor to a manufactured home retailer: Include the amount paid by a consumer or creditor to a manufactured home retailer that qualifies as a loan originator under 12 CFR 1026.36(a)(1) for loan origination activities. Compensation paid by the manufactured home retailer to its employees does not have to be included. 12 CFR 1026.32(b)(1)(ii)(D); comment 32(b)(1)(ii)-5.

- Compensation included in the sales price of a manufactured home: Include loan originator compensation that the creditor has knowledge is included in the sales price of a manufactured home. The creditor is not required to investigate the sales price of a manufactured home to determine if the sales price includes loan originator compensation. Comment 32(b)(1)(ii)-5.

3. REAL ESTATE-RELATED FEES

Include real estate-related fees unless all of the following conditions are satisfied:

- The charge is reasonable;
- The creditor receives no direct or indirect compensation in connection with the charge; and
- The charge is not paid to an affiliate of the creditor.

If one or more of those three conditions is not satisfied, include the charge in points and fees even if it would be excluded from the finance charge. 12 CFR 1026.32(b)(1)(iii).

Real estate-related charges include:

- Fees for title examination, abstract of title, title insurance, property survey, and similar purposes;
- Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents;
- Notary and credit-report fees;
- Property appraisal fees or inspection fees to assess the value or condition of the property if the service is performed prior to consummation, including fees related to pest-infestation or flood-hazard determinations; and
- Amounts paid into escrow or trustee accounts that are not otherwise included in the finance charge (except amounts held for future payment of taxes).

4. PREMIUMS FOR CREDIT INSURANCE; CREDIT PROPERTY INSURANCE; OTHER LIFE, ACCIDENT, HEALTH OR LOSS-OF-INCOME INSURANCE WHERE THE CREDITOR IS BENEFICIARY; OR DEBT CANCELLATION OR SUSPENSION COVERAGE PAYMENTS

Include premiums for these types of insurance that are payable at or before consummation even if such premiums are rolled into the loan amount, if permitted by law. 12 CFR 1026.32(b)(1)(iv).

These charges may be excluded if they are paid after consummation (*e.g.*, monthly premiums).

Note that credit property insurance means insurance that protects the creditor's interest in the property. It does not include homeowner's insurance that protects the consumer.

Premiums for life, accident, health, or loss-of-income insurance may be excluded if the consumer (or another person designated by the consumer) is the sole beneficiary of the insurance.

5. MAXIMUM PREPAYMENT PENALTY

Include the maximum prepayment penalty that a consumer could be charged for prepaying the loan. 12 CFR 1026.32(b)(1)(v).

6. PREPAYMENT PENALTY PAID IN A REFINANCE

If the creditor is refinancing a loan that the creditor or its affiliate currently holds or is currently servicing, then include any penalties charged to the consumers for prepaying their previous loan(s). 12 CFR 1026.32(b)(1)(vi).

7. CHARGES PAID BY THIRD PARTIES

Include charges paid by third parties that fall within the definition of points and fees in 12 CFR 1026.32(b)(1)(i) through (vi) (discussed above), including charges included in the finance charge. Comment 32(b)(1)-2. Charges paid by third parties that fall within the exclusions to points and fees in 12 CFR 1026.32(b)(1)(i)(A) through (F) do not have to be included in points and fees. Seller's points are excluded from the finance charge (*see* 12 CFR 1026.4(c)(5)) and therefore can be excluded from points and fees, but charges paid by the seller should be included if they are for items listed as points and fees in 12 CFR 1026.32(b)(1)(ii) through (vi).

8. CREDITOR-PAID CHARGES

Charges paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under 12 CFR 1026.32(b)(1)(ii), can be excluded from points and fees. Comment 32(b)(1)-2.

5. Refinancing from Non-Standard to Standard Loans

The ATR/QM Rule gives creditors the option to refinance a current mortgage customer from a non-standard mortgage loan (which includes various types of mortgages that can lead to payment shock and can result in default) into a standard mortgage loan without having to meet the Rule's ATR requirements. 12 CFR 1026.43(d).

This option applies only to mortgage loans a creditor holds or services. Subservicers and third parties cannot use it. 12 CFR 1026.43(d)(2). A creditor can use this option only when:

- The payments under the refinance will not cause the consumer's principal balance to increase.
- The consumer uses the proceeds to pay off the original mortgage loan and for closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq*. The consumer takes out no cash.
- The consumer's monthly payment will materially decrease (*i.e.*, at least 10 percent).
- The consumer has only one 30-day late payment in the past 12 months and no late payments within six months.
- The consumer's written application for the standard mortgage is received no later than two months after the non-standard mortgage has recast.
- The creditor has considered whether the standard mortgage likely will prevent the consumer from defaulting on the non-standard mortgage once the loan is recast.
- If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with the Rule's ATR requirements or QM provisions, as applicable.

12 CFR 1026.43(d)(2) and (3)(ii).

The new loan has to meet all of the following:

- The loan cannot have deferred principal, negative amortization, or balloon payments.
- Points and fees must fall within the thresholds for QMs.
- The loan term cannot exceed 40 years.
- The interest rate must be fixed for at least the first five years of the loan.

The ATR/QM Rule does not apply when a creditor modifies an existing loan without refinancing it. A creditor can provide a loan modification to a defaulted (or non-defaulted) consumer without complying with the ATR/QM Rule's ATR requirements. *See* 12 CFR 1026.20 and related commentary.

12 CFR 1026.43(d)(1)(ii).

To calculate payments when comparing non-standard loans to standard loans, a creditor first calculates the payment the consumer will have to make if the non-standard loan reaches a recast point. 12 CFR 1026.43(d)(5). Recast occurs when:

- For an adjustable-rate mortgage, the introductory fixed-rate period ends.
- For an interest-only loan, the interest-only period ends.
- For a negatively amortizing loan, the negatively amortizing payment period ends.

12 CFR 1026.43(b)(11).

A creditor then calculates the payment for the standard loan, using the fully indexed rate and the monthly payment that will fully amortize the loan based on equal monthly payments. 12 CFR 1026.43(d)(5). Finally, the creditor compares the two payments. A material decrease must be evaluated in light of the facts and circumstances for the particular loan. A payment reduction of 10 percent or more meets the "materially lower" standard. 12 CFR 1026.43(d)(2)(ii); comment 43(d)(2)-1.

Note that the payment calculation for this special refinancing provision is slightly different from the payment calculation used under the general ATR standard. Under this special provision, a creditor must base the calculation of the loan amount on the amount of principal that will be outstanding at the time of recast, taking into account any principal payments that the consumer will have made by that time. 12 CFR 1026.43(d)(5)(i).

6. Limits on prepayment penalties

In addition to setting forth ATR requirements, the ATR/QM Rule includes limits on the use of prepayment penalties that apply to almost all closed-end consumer credit transactions secured by a dwelling including any real property attached to the dwelling. 12 CFR 1026.43(a). The Rule's limits on prepayment penalties do not apply to any of the following:

- Open-end credit plans (home equity lines of credit or HELOCs) subject to 12 CFR 1026.40. However, a loan may not be structured as open-end credit to evade the Rule. 12 CFR 1026.43(h).
- Timeshare plans.

12 CFR 1026.43(a)(1) and (2).

A prepayment penalty may only be included in a covered mortgage loan if all of the following conditions are met:

- The loan has an APR that cannot increase after consummation;
- The loan is a General QM, a Temporary QM, a Small Creditor QM, or a Balloon-Payment QM;
- The loan is not a higher-priced mortgage loan as defined in 12 CFR 1026.35(a); and
- The prepayment penalty is otherwise permitted by law.

12 CFR 1026.43(g)(1).

Additionally, a prepayment penalty cannot be imposed after the first three years of the loan term and cannot be greater than:

- Two percent of the outstanding loan balance prepaid during the first two years of the loan; or
- One percent of the outstanding loan balance prepaid during the third year of the loan.

12 CFR 1026.43(g)(2).

If a creditor wants to include a prepayment penalty in a covered transaction, the creditor must also offer the consumer an alternative transaction that the creditor believes the consumer will qualify for. The alternative loan cannot have a prepayment penalty. The alternative loan must be similar to the loan with the prepayment penalty, so the consumer can choose between two products the consumer will likely qualify for. The alternative loan:

- Must be a fixed-rate or graduated-payment loan and must match the rate type from the loan with the prepayment penalty;
- Must have the same term as the mortgage with the prepayment penalty; and
- Cannot have deferred principal, balloon or interest-only payments, or negative amortization.

The alternative loans do not have to come from the same secondary market partner, and a creditor may show the consumer alternative loans from more than one investor or aggregator. 12 CFR 1026.43(g)(3).