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CLIENT ALERT

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CFPB Issues Proposed Rule to Create New Category of "Seasoned Qualified Mortgages"

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On August, 18, 2020, the CFPB issued a new proposed rule to create a new category of "seasoned qualified mortgages" (Seasoned QMs) that would receive the safe harbor conclusive presumption of meeting the Ability to Repay standard. The proposed rule would allow certain loans that meet specified criteria and are held in portfolio by the lender for three years to qualify as QMs. The Bureau stated that it believes "a Seasoned QM definition could complement existing QM definitions and help ensure access to responsible, affordable mortgage credit upon the expiration of one of the existing QM definitions." The CFPB also stated that it believes the proposed rule will "encourage safe and responsible innovation in the mortgage origination market, including for certain loans that are not QMs or are only rebuttable presumption QMs under the existing QM categories," and would provide more legal certainty as to loans made in accordance with other QM definitions.

Comments on the proposed rule are due within 30 days of the proposed rules' publication in the Federal Register. A copy of the CFPB's proposed rule can be found here.

Background

The CFPB previously issued two proposed rules regarding QMs:

- A proposal to utilize a price-based approach in the Regulation Z general QM definition instead of a DTI limitation; and
- A proposal to extend the "GSE patch" until the first proposal above becomes effective.

The Proposed Seasoned QM Rule

The new proposed Seasoned QM criteria are that the loan:

- Is held in the lender's portfolio for three years (a 36-month seasoning period) (with certain narrow exceptions).
- Is in compliance with general restrictions on product features and points and fees and meet certain underwriting requirements, including that:
  - It is a first lien, fixed rate loan.
  - It is fully amortizing with no negative amortization.
  - It does not have a balloon payment or interest only payments.
  - The loan term does not exceed 30 years. Points and fees generally do not exceed 3 percent.

- The total points and fees do not exceed specified limits.
- The loan is underwritten such that the creditor considered and verified the consumer's debt-to-income ratio or residual income at origination. The creditor would not have to meet any specified DTI limit and would not have to follow Appendix Q of Regulation Z.

- Meets certain performance criteria over the 36-month seasoning period, including that:
  - It has no more than two 30-day delinquencies and no delinquencies of 60 or more days at the end of the three year seasoning period. If there is a 30 day or more delinquency at the end of the seasoning period, the seasoning period is not considered ended until the delinquency is cured.
  - If there has been a disaster or pandemic-related national emergency, a loan may be a seasoned QM even though the borrower has failed to make all contractually required payments if certain conditions are met, the consumer receives a temporary payment accommodation, and the payment accommodation requirements are fulfilled and the accommodation period has ended. The time of the accommodation period will not be counted toward the three year seasoning period.
  - A creditor can generally accept deficient payments within a payment tolerance of $50 on up to three occasions during the seasoning period.

Buchalter's Mortgage Banking Practice Group is available to help lenders understand and address the full range of mortgage banking related issues. Feel free to contact any of the Buchalter Mortgage Banking Industry Group.

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