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Recent ATR/QM Developments

As BCG reported in its January 2021 Newsletter, the CFPB issued two final rules amending Regulation Z's ability-to-repay rule (ATR Rule) in December 2020. (Remember, the ATR Rule applies to closed-end, Reg Z-covered credit secured by a dwelling, and there are generally two ways to comply with the ATR Rule – follow the General ATR Standard or make a Qualified Mortgage (QM).)

One of the December 2020 final rules will add a new Seasoned QM; the other will revise the other QMs, the QMs' legal protections test, add a new HUD/VA/AG QM, and make one direct change to the General ATR Standard. Although this second rule does more than just amend the General QM, the CFPB refers to it as the "General QM Final Rule." All these amendments are to be effective March 1, 2021, with a July 1, 2021 mandatory effective date. This article clarifies a few points about the ATR Rule and discusses some more recent developments.

Here's what we need to clarify from the January 2021 Newsletter article – the General QM Final Rule adds a new APR versus average prime offer rate (APOR) test to the General QM. For a first-lien covered transaction with a loan amount of \$110,260 or more, the APR may not exceed the APOR for a comparable transaction by 2.25 percentage points. Also, although the final rule will be deleting Appendix Q and the 43 percent debt-to-income limit, the revised General QM will still require creditors to verify income, assets, debts, etc., and consider the consumer's monthly DTI ratio or residual income. Instead of using Appendix Q, creditors will meet this General QM criteria by generally following the General ATR Standard's corresponding rules. The Seasoned QM will be effective on March 1, 2021, not February 27, 2021.

Moving on to some recent ATR/QM developments, the CFPB issued a statement on these final rules – "Statement on Mandatory Compliance Date of General QM Final Rule and Possible Reconsideration of General QM Final Rule and Seasoned QM Final Rule" (February 23, 2021). In that statement, the CFPB said it is considering whether to issue a new rule to "revisit" the Seasoned QM, by either revoking or amending it. If the CFPB does issue a new Seasoned QM rule, it will address Seasoned QM loans that were made while the December 2020 Seasoned QM final rule was in effect.

The CFPB also said that it expects to issue "shortly" a proposed rule which would delay the General QM Final Rule's July 1, 2021 mandatory compliance date. If the CFPB does delay the mandatory compliance date, creditors may either use the current General QM loan definition (that is, the General QM definition with a 43 percent DTI ratio limit and Appendix Q) or the revised General QM definition (that is, the General QM definition without that DTI ratio limit or Appendix Q, but with, for example, the APR v. APOR test) for applications received between March 1, 2021 until the delayed mandatory compliance date. Either way, there is some good news – the CFPB anticipates

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that it will extend the Temporary GSE QM past July 1, 2021. However, they did not say what the new expiration date would be. Last, the CFPB said that it is also considering whether it needs to reconsider other aspects of the General QM Final Rule. Perhaps, they are referring to the changes they made to the other QMs or the QMs' legal protections test.

Even though the CFPB is reconsidering the December 2020 final rules, it nonetheless revised the ATR/QM Small Entity Compliance Guide to reflect those rules. It also released that updated guide on February 23, 2021.

The last recent development here is the Congressional Research Service's report on the "[QM] Rule and Recent Revisions" (February 16, 2021). That report summarizes the December 2020 final rules and notes that, in addition to the CFPB raising concerns about those rules, Maxine Waters (D-Cal.), chairwoman of the House Financial Services Committee, has also expressed her concerns. At the time of the report's publication, it was unclear what changes Congress is considering making to the ATR/QM rules.

BCG will keep an eye on the ATR Rules' developments. In the meantime, contact Stephanie Shea (SShea@ABLAWYERS.COM) with any questions.