



Loan Eligibility Under the Preferred Stock Purchase Agreement and Revised General Qualified Mortgage Rule

Frequently Asked Questions

Jun. 30, 2021

We issued [Lender Letter LL-2021-11](#), Loan Eligibility Under the Preferred Stock Purchase Agreement and Revised General Qualified Mortgage Rule, in May 2021 to provide details about updated underwriting and loan eligibility policies, certain Desktop Underwriter® implementation policies, and a change to our high LTV refinance product.

Reminder: Determination of regulatory compliance

We will not make the determination of whether a loan complies with or is exempt from the Truth in Lending Act (TILA), Ability to Repay requirements (ATR), or the Revised General QM Rule (Revised QM), or whether a lender's designation of the status of a loan under the Revised QM Rule is correct. These determinations of compliance with the Revised QM Rule and other applicable laws are the lender's responsibility.

This document addresses frequently asked questions from lenders about loan eligibility under the Revised QM definition and [LL-2021-11](#).

Q1. Will Fannie Mae and Freddie Mac be aligned in their implementation?

Yes, based on guidance from FHFA, Fannie Mae and Freddie Mac (the GSEs) generally are aligned in their approach, although some implementation differences may be necessary based on existing GSE-specific requirements. For example, due to different eligibility parameters for ARMs with initial fixed periods within a range of dates, Fannie Mae and Freddie Mac have addressed this issue differently.

Q2. Does Fannie Mae have a list of loans that are classified as TILA Exempt or ATR Exempt Mortgages?

No. The lender must determine whether the loan is classified as TILA Exempt or ATR Exempt. We cannot provide regulatory interpretations or advice. Consult with regulatory counsel regarding the TILA requirements and related staff commentary.

Note: Lenders are required to provide a variety of data points in the Uniform Closing Dataset (UCD) file, including whether a loan is ATR Exempt or not. See the [UCD Specification](#).

Q3. The CFPB extended the mandatory effective date for compliance with the Revised QM Rule until October 2022. Why is Fannie Mae not extending the purchase/securitization deadline (originally communicated in [LL-2021-09](#)) for loans originated in accordance with the GSE Patch as a result?

While the CFPB has extended the mandatory compliance date for the Revised QM Rule, the Mar. 1, 2021 effective date of the rule did not change. There are separate requirements imposed upon the GSEs under the terms of the Amended Preferred Stock Purchase Agreement (PSPA) (Section 5.14) between Treasury and each of the GSEs. One of those requirements is that each loan acquired by the GSEs must be a qualified mortgage under the Revised QM Rule (with limited exceptions). Compliance with this provision is required by Jul. 1, 2021. The extension of the mandatory compliance date by the CFPB for the Revised QM Rule does not change the GSEs' Jul. 1, 2021 compliance date under the PSPA.

Q4. Is there any flexibility to the purchase/securitization cutoff of Aug. 31, 2021 for loans with application dates on or before Jun. 30?



The delivery deadlines represent aligned policy between Fannie Mae and Freddie Mac, under the guidance of FHFA, to ensure compliance with Section 5.14 of the PSPA.

Lenders are reminded that loans with application dates prior to Jul. 1 (including those with application dates prior to the Revised QM effective date of Mar. 1, 2021) that meet the requirements of the Revised QM Rule are eligible for purchase/securitization after Aug. 31. Loans that are only eligible under the GSE Patch (and would not also be compliant with the Revised QM Rule) must be purchased or securitized by Aug. 31.

Exception: Single-closing construction-to-permanent loans with application dates prior to Jul. 1, 2021 that meet the QM Patch requirements and do not meet Revised QM eligibility can be purchased/ securitized until Feb. 28, 2022.

Q5. Will Fannie Mae continue to purchase Higher Priced Covered Transactions (HPCTs) that are subject to the rebuttable presumption criteria in the ATR Rule?

Yes, we will continue to purchase HPCTs.

Q6. Are Housing Finance Agency (HFA) loans subject to the points and fees and APR-APOR spread requirements?

Lenders should refer to the ATR provisions of Regulation Z to determine if a loan meets the HFA exemption, including for loans that are not originated directly by an HFA. Loans that do meet the exemption requirements fall under the definition of an Exempt Loan in our *Selling Guide*. The requirements related to maximum points and fees and APR-APOR spread for Exempt loans are described in [LL-2021-11](#).

Q7. The Revised QM Rule for the “verify” provision includes commentary (1026.43 (e)(2)(v)(B)-3.i) that cites Chapters B3-3 through B3-6 of the *Selling Guide*, published Jun. 3, 2020. This citation states that using these chapters in the *Selling Guide* meets the standards for verifying income or assets using third-party records, and provides a creditor with reasonably reliable evidence of the consumer’s income or assets. Where can this version of the *Selling Guide* be located?

The Jun. 3, 2020 version of the *Selling Guide* is published on our [website](#).

Q8. The Revised QM Rule for the “verify” provision includes commentary (1026.43(e)(2)(v)(B)-3.iv) that states if revisions are made to Chapters B3-3 through B3-6 of the *Selling Guide*, published Jun. 3, 2020, the creditor still complies with the “verify” provision if the revisions are “substantially similar” to the version published Jun. 3, 2020. Can lenders assume that revisions Fannie Mae publishes after Jun. 3, 2020 meet the CFPB’s “substantially similar” conditions and that they have met the associated portion of the Revised QM Rule requirements?

No. Fannie Mae will not interpret the regulatory meaning of “substantially similar” for lenders. Lenders may, at their discretion, reach out to the CFPB for any questions or concerns related to the “substantially similar” text within the regulatory commentary or any other questions related to the text within the Revised QM Rule and associated preamble.

As stated in [LL-2021-11](#), we will not make the determination of whether a loan complies with or is exempt from TILA, ATR, or the Revised QM Rule, or whether a lender’s designation of the status of a loan under the Revised QM Rule is correct. These determinations of compliance with the Revised QM Rule and other applicable laws are the lender’s responsibility.

Q9. If, based on the Revised QM Rule, an ARM can have a qualifying rate that is lower than what is required by the *Selling Guide*, may the lower rate be used to qualify the borrower?

No. To be eligible for delivery to Fannie Mae, all loans must follow the *Selling Guide* in all respects, including in calculating the qualifying interest rate in accordance with the *Guide*, in addition to meeting the qualifying rate requirements under Revised QM. For short-term ARM loans, [LL-2021-11](#) requires using the note rate plus lifetime



cap for three-year ARMs, and the higher of the fully indexed rate or note rate plus periodic rate cap for five-year ARMs. Lenders must use the loan amount over the loan term to calculate periodic payments of principal and interest. If the qualifying rate per these requirements is higher than the rate required under Revised QM, the requirements under [LL 2021-11](#) must be met for the loan to be eligible for delivery.

Q10. Can lenders rely on the messages on the Desktop Underwriter® (DU®) Underwriting Findings Report to determine that loans are compliant with the Revised QM Rule and eligible for delivery to Fannie Mae?

While every effort has been made to update Fannie Mae's underwriting and eligibility requirements in support of the Revised QM Rule, the final determination of whether a loan is compliant with Revised QM is the lender's responsibility. Certain elements of the Revised QM Rule are not able to be assessed by DU (for example, the requirement to comply with the maximum spread between the loan's APR and the APOR for a comparable transaction). The limited waiver of representations and warranties provided when DU returns an Approve/Eligible recommendation does not apply to the product eligibility representations and warranties related to the Ability to Repay Eligibility Requirements.

Q11. For an ARM using a CMT index that is eligible for sale through September 2021, does the higher qualifying rate based on the Revised QM rule need to be used if the loan will not be delivered by Aug. 31, 2021? Does the lender need to resubmit the loan casefile to DU prior to delivery?

All loans purchased or securitized after Aug. 31, 2021 must comply with the Revised QM Rule (with very limited exceptions). ARM loans originated using a CMT index remain eligible for sale through September 2021. Therefore, any ARM loan purchased or securitized after Aug. 31, including those based on a CMT index, must use a qualifying rate (and APR) calculated in accordance with the Revised QM Rule.

There is no requirement to resubmit the loan to DU for purposes of updating the qualifying rate if the lender determines the qualifying rate is compliant with Revised QM.

For casefiles created prior to Jul. 1 using a CMT plan number that are resubmitted to DU, the current qualifying rate calculations (which may not comply with Revised QM) will be used by DU. Lenders must assess the ARM type and cap structure for the loan to ensure the ARM is qualified using a qualifying rate that complies with the Revised QM Rule.

If, to be compliant with the Revised QM Rule the casefile should be underwritten with a higher qualifying rate, the lender has the option of either choosing a Generic ARM plan (with the appropriate associated qualifying rate) or using a Lender ARM plan and entering the ARM qualifying rate. If using a Lender ARM plan and an ARM qualifying rate is not entered, DU will use note rate plus 5%.

Lenders are responsible for ensuring that the correct qualifying rate rules are used by DU.

Q12. Will Fannie Mae update its systems to reflect changes in the QM definition?

Our systems test loans against our purchase requirements. We do not use our systems to enforce compliance with industry regulations and applicable law. Instead, we rely on our lenders' representations and warranties with regard to compliance with applicable law as outlined in the *Selling Guide*. Lenders should check with their legal counsel on how to comply with the Revised QM Rule.

We are working to update our systems to perform an automated check of the APR-APOR thresholds and points and fees in the Lender Letter. We will utilize the UCD and Uniform Loan Delivery Data (ULDD) datasets (aligned with Freddie Mac) as provided to perform the automated checks at time of delivery/purchase. The automated check for APR-APOR spread is expected to be implemented prior to Sep. 1, 2021. An automated check for points and fees will follow.



Q13. For an ARM with an initial rate adjustment more than 60 months past the first payment date, must the lender treat this ARM as a short-term ARM for qualification and APR calculation purposes?

A five-year ARM with an initial rate adjustment more than 60 months past the first payment date is not eligible for delivery to Fannie Mae.

To be eligible for delivery, all fixed-period ARM loans must have an initial fixed-rate interest period (in months) that coincides with the fixed-period of the ARM type (in years). For example, a loan delivered under plan number 4927 (five-year SOFR-indexed ARM) with an initial fixed-period of five years and subsequent adjustment periods of six months, must have an initial rate adjustment of 60 months. Any adjustment period that differs from 60 months is not eligible as a five-year ARM plan.

Q14. The Standard ARM Plan Matrix provides for a range of initial fixed rate interest periods for each ARM plan. This appears to permit a wide range of first adjustment periods for each plan number. Does this mean these ranges are acceptable ranges for the first rate adjustment?

The ranges expressed for the plan numbers in the [Standard ARM Plan Matrix](#) relate to the adjustment period relative to the MBS Pool Issue Date. These ranges ensure homogenous, predictable payment adjustments across all loans in the MBS pool. These ranges should not be interpreted to relate to the period of time between the first payment date of the loan and the first interest rate adjustment under the terms of an individual loan.

Q15. What is the APOR and what index is it based on?

The average prime offer rate (APOR) is a survey-based estimate of annual percentage rates (APRs) currently offered on prime mortgage loans. It is used to calculate “rate spread” for Home Mortgage Disclosure Act (HMDA) reporting purposes and to determine whether the loan is a higher priced mortgage loan under Regulation Z. APOR is calculated and published weekly by the Federal Financial Institutions Examination Council (FFIEC).

Under UCD requirements, lenders must submit the “rate spread” (difference between the APR and APOR reported under HMDA) and whether a loan is ATR Exempt or subject to the ATR. These UCD data points can help lenders determine compliance with the revised definition of QM. For more information, see our [UCD webpage](#), and the UCD Specification, Appendix H/I.

We are working with Freddie Mac to update requirements for lenders to provide the unique QM APR calculation required for short-term ARMs that are subject to the Revised QM Rule. We anticipate a new field to be added to the UCD. We will notify lenders of updated data reporting requirements in a future UCD communication.