Consumer Mortgage Coalition

REQUESTS for GUIDANCE on MORTGAGE ORIGINATION REGULATIONS
to the BUREAU OF CONSUMER FINANCIAL PROTECTION

Updated December 20, 2013

TABLE OF CONTENTS

HIGHEST PRIORITY

The CFPB provided oral guidance on October 17, 2013. BuckleySandler prepared a transcript, available here.

TOPIC	PROVISION	RECOMMENDATION
Ability to Repay Regulation		
1. Self-employed consumers	Appendix Q § I.D.4.c requires self-employed consumers to provide: "Year to date profit and loss (P&L) statement and balance sheet[.]"	We request clarification that this permits creditors to rely on documents that the consumer or the consumer's company generates, and that audited financial statements are not required.
2. Planned retirement	Comment 43(c)(1)-2 provides: "A change in the consumer's circumstances after consummation (for example, a significant reduction in income due to a job loss or a significant obligation arising from a major medical expense) that cannot be reasonably anticipated from the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule. However, if the application or records considered at or before consummation indicate there will be a change in a consumer's repayment ability after consummation (for example, if a consumer's application states that the consumer plans to retire within 12 months without obtaining new employment or that the consumer will transition from full-time to part-time employment), the creditor must consider that information under the rule." Appendix Q § I.B.I note i provides: "Effective income for consumers planning to retire during the first three-year period must include the amount of:	Comment 43(c)(1)-2 gives the required consideration only for a consumer who states a plan to retire within 12 months, and the appendix gives the required documentation only for consumers who plan to retire in three years. It is unclear why the section-by-section analysis uses a three-year period but the comment uses a 12-month example. The section-by-section discussion is not part of the regulation or commentary, so creditors cannot rely on it. How definite must a future possible income reduction be before a creditor must consider it? Do the answers to these questions differ under § 43(c) and appendix Q?

TOPIC	PROVISION	RECOMMENDATION
	a. Documented retirement benefits; b. Social Security payments; or c. Other payments expected to be received in retirement. The CFPB explains in the section-by-section analysis of the amended regulation: "With regard to the fair lending concerns raised by some commenters regarding questions presented to consumers relating to future retirement plans, the Bureau agrees that the final rule and appendix Q do not obligate creditors to ask consumers when they expect to retire. If, however, a consumer discloses a plan to retire during the first three-year period by making an affirmative statement of such plans, creditors should consider documented retirement benefits, Social Security payments, and other payments expected to be received in retirement." 78 Fed. Reg. 44686, 44706 (July 24, 2013).	
3. Calculation of loan payment and DTI	Loan payment amounts and DTI are calculated differently depending on which standard the creditor uses. <u>General repayment ability (non-QM)</u> • For loans with no balloon, IO period, or negative amortization, creditors must calculate the loan payment using the greater of the introductory rate or the fully-indexed rate. § 43(c)(5)(i). • If creditors calculate DTI, they must use the payments on: the covered transaction; simultaneous loans; mortgage-related obligations; and current debt obligations, alimony, and child support. § 43(c)(7).	Creditors that make an intended QM loan that due to error is not a QM loan will try to show compliance with the general repayment ability requirements. To do so, would a creditor need to establish the payment amount, DTI, and residual income calculated under the general repayment ability standards? At a minimum, if the creditor has information that shows a higher payment amount, lower DTI, and higher residual income under the QM standard than required under the non-QM standard, the creditor should be able to use that information to show compliance.

<table>
<tr><th>TOPIC</th><th>PROVISION</th><th>RECOMMENDATION</th></tr>
<tr><td></td><td><u>General QM definition</u>
• Under the general QM definition, the loan payment is based on the maximum rate during the first five years. § 43(e)(2)(iv)(A).
• The required 43 percent DTI is determined using the payments on the covered transaction; simultaneous loans; and mortgage-related obligations. § 43(e)(2)(iv).

<u>Special agency QM definition</u>
• The agencies also have standards. Fannie Mae, for example, bases loan payment calculations on an ARM loan using the greater of the note rate plus 2% or the fully-indexed rate, but using the note rate if it is fixed for longer than five years. Fannie Mae Selling Guide § B3-6-04.
• Fannie Mae bases DTI calculations on monthly payments on installment debts that extend beyond ten months, and sometimes debts that do not extend ten months, plus alimony, child support, or maintenance payments that extend beyond ten months. Fannie Mae Selling Guide § B3-6-02.</td><td></td></tr>
<tr><td colspan="3" align="center">Points and Fees</td></tr>
<tr><td>4. Financed points and fees and total loan amount</td><td>Section 32(b)(4) defines the total loan amount as depending on whether certain points and fees are financed:

“The total loan amount for a closed-end credit transaction is calculated by taking the amount financed, as determined according to § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii), (iv), or (vi) that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor.”</td><td>If the consumer prepays some but not all closing costs, or some but not all are paid from loan proceeds, how does the creditor determine which fees are financed and which the consumer paid?</td></tr>
</table>

TOPIC	PROVISION	RECOMMENDATION
5. Treatment of finance charge exclusions	The definition of points and fees includes several items that are defined as finance charge items under §§ 4(a) and 4(b). Points and fees also include additional items, in §§ 32(b)(1)(ii) – (vi) and (b)(2)(ii) – (viii). However, the points and fees definition does not expressly address items excluded from the finance charge definition under § 4(c) – (e).	We request clarification that items excluded from the finance charge under § 4(c) – (e) are not included in points and fees unless they are included in points and fees in §§ 32(b)(1)(ii) – (vi) or (b)(2)(ii) – (viii).
6. Definition of interest rate without any discount points	Section 32(b)(1)(i)(E) and (F) exclude *bona fide* discount points "if the interest rate without any discount does not exceed" specified levels.	A creditor might offer a consumer the following options: • A rate of 4.000% with a credit to the borrower of .25 points; • A rate of 3.875% with the borrower paying .25 points; and • A rate of 3.750% with the borrower paying .75 points. In this example, which rate is the interest rate without any discount? CFPB staff advised orally to the MBA on September 4 and to the public on October 17, 2013 that the undiscounted rate is the starting or undiscounted rate, such as from a rate sheet, after adjustment for the individual consumer's credit profile, such as LLPAs. The CFPB said that exclusion "is limited to the amount, but for the payment of which the consumer would have paid the undiscounted interest rate." The CFPB said the starting rate must be both capable of calculation and available to the consumer. If the rate is available only to consumers with a specified credit score, that rate is not available to consumers who do not meet the credit score requirement. The CFPB said it is not necessary to offer a loan with exactly zero points. The CFPB explained: • If the undiscounted rate is 4% with ¼ point, and the consumer agrees to pay 1.5 points to lower the rate, discount points excludable

TOPIC	PROVISION	RECOMMENDATION
		from points and fees can be up to 1.5 points. The ¼ point is not excluded from points and fees because the consumer would have paid it with the undiscounted rate. • If the undiscounted rate is 4% with a ¼ point credit, and the consumer agrees to pay 1.5 points to lower the rate, discount points excludable from points and fees can be up to 1.5 points. The ¼ point credit is not excluded because the consumer did not directly pay it. We request clarification of the starting rate when there are more than one options available to the consumer, as in the example above with three options. Under each option, the consumer could buy down the rate by paying points, and each would pass the but-for test.
QM Eligibility		
7. Creditor-paid principal curtailments	Section 43(e)(2)(i) provides that a loan qualifies as a QM loan if, among other things, it: "provides for 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[.]"	Some flexibility is warranted for loans that help consumers pay down the principal. A creditor may offer a loan on which the creditor provides principal curtailments tied to the amount of deposits the consumer has with the creditor. These curtailments reduce the principal balance and shorten the loan term, but do not alter the monthly payment. We request confirmation that this curtailment benefit does not disqualify a loan from QM eligibility.
8. Agency standards in written agreements	Comment 43(e)(4)-4.1 provides that a loan can be a QM if: "The loan conforms to the relevant standards set forth in the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single-Family Seller/Servicer Guide in effect at the time, or to standards set forth in a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the standards of those guides[.]"	We request confirmation that a loan for which a creditor cures errors after consummation, in accordance with GSE and agency standards, retains special agency QM status.
9. Agency standards	Comment 43(e)(4)-5 provides:	This comment appears to assume that it is possible to know whether the

<table>
<tr><th>TOPIC</th><th>PROVISION</th><th>RECOMMENDATION</th></tr>
<tr><td>change after consummation</td><td>“[E]ach loan should be evaluated by the creditor based on the facts and circumstances relating to the eligibility of that loan at the time of consummation.”

The comment gives two examples of DU input errors that are discovered after consummation.</td><td>DU recommendation would have changed if accurate information had been input. While DU and LP have processes for re-running loans, they do not always allow for re-running the loan using the same version of DU or LP or the same credit report used to originate the loan. We recommend that the CFPB work with the GSEs to allow creditors to re-run DU and LP with the same AUS version and the same credit report. Barring that, if the credit report or DU or LP has changed, will a DU or LP recommendation be evidence of compliance or noncompliance?</td></tr>
<tr><td>10. Assumptions</td><td>Comment 43(a)-1 provides:

“In general, § 1026.43 applies to consumer credit transactions secured by a dwelling. . . . In addition, § 1026.43 does not apply to any change to an existing loan that is not treated as a refinancing under § 1026.20(a).”

It is unclear whether assumptions are subject to the rule. An assumption involves a change to an “existing loan” but the requirements to provide disclosures on assumptions are in § 20(b), while § 20(a) requires disclosures for refinancings.</td><td>CFPB staff advised orally on October 17, 2013 that the ability-to-repay rule applies to assumptions, but that under § 1026.20(b), there is only an assumption if the creditor expressly agrees in writing to accept the new borrower. Clarifications are needed.

• If § 1026.20(b) applies to determinations of whether an assumption is subject to the ability-to-repay regulation, does the 20(b) commentary apply as well, and if so, does it apply fully or partially? That is, do the following apply in determining whether the ability-to-repay regulation applies?
  o Comment 20(b)-1 provides that “[a]n assumption under the regulation requires . . . [a] residential mortgage transaction.”
  o Comment 20(b)-3 provides that a creditor does not expressly agree, and there is not an assumption, based on approval of creditworthiness, notification of a change in records, mailing a coupon book, or accepting payments from the new consumer.
  o Comment 20(b)-4 provides that if a new consumer is added, there is not an assumption unless the new consumer is the primary obligor, or if neither consumer is designated as primary obligor, if the creditor accepts payment from the subsequent consumer.</td></tr>
</table>

TOPIC	PROVISION	RECOMMENDATION
		- Comment 20(b)-5 provides that § 20(b) only applies if both the previous and subsequent borrowers are consumers, and that it does not apply if a consumer takes over an obligation from a corporation. - CFPB staff advised orally on November 14 that the fully-indexed, introductory, and maximum rate in the first five years are measures as of consummation, not as of the assumption. However, Comment 20(b)-6 provides that disclosures, in the event of an assumption, are to be made based on the "remaining obligation." Applying the loan to assumptions may lead to unnecessary foreclosure if the loan has a due-on-sale clause. If a borrower dies and a child inherits, and wants to retain and live in, the house, servicers today determine whether the heir qualifies to assume the loan. If so, the heir accepts the loan obligation and the servicer releases the estate from the loan. Otherwise, according to Fannie Mae Servicing Guide § 408: "If the purchaser is not creditworthy, the mortgage insurer does not approve the transfer, or the mortgage insurer's specified conditions are not met, the servicer must take all steps that are necessary to accelerate the mortgage loan debt—if the transfer of ownership actually occurs. If the funds required to satisfy the debt are not received after the mortgage loan has been accelerated, the servicer should initiate foreclosure proceedings." If the heir must meet the § 1026.43 requirements, but does not qualify for a safe harbor QM loan, the creditor may be unwilling to risk ability-to-repay liability, and would need to accelerate the debt. In this

TOPIC	PROVISION	RECOMMENDATION
		situation, the family would be better off having a chance to make loan payments and retain the home even if the creditor is unwilling to risk ability-to-repay liability. This is not a case of needing to apply the ability-to-repay regulation to prohibit origination of poorly underwritten loans – in this case, the loan already exists. Rather, this is a case where the policy should be to keep the family in the home. This is the policy Congress enacted in the Garn-St. Germain Depository Institutions Act of 1982, which prohibits exercise of a due-on-sale clause in this case. *See* 12 U.S.C. § 1701j-3(d). *See also*: “*Limitations on the enforcement of due-on-sale clauses* The Committee believes that it would be unfair and inappropriate for lenders to enforce due-on-sale clauses under certain circumstances—such as involuntary transfers resulting from the death of a borrower, transfers which rearrange ownership rights within a family, or transfers resulting from a separation or dissolution of a marriage. . . . It is not the intention of the Committee that Section 341(d) of the bill facilitate financing arrangements which are designed to circumvent the legitimate right of a lender to enforce a due-on-sale clause, rather, **the purpose of this section is to provide protections for consumers** by prohibiting the enforcement of due-on-sale clauses where such enforcement would be inequitable.” S. Rep. 97-536, at 24-25 (1982) (emphasis added). We suggest that when 12 U.S.C. § 1701j-3(d) prohibits exercise of a due-on-sale clause, the ability-to-repay regulation should not apply. This would help protect consumers, and it would implement Congressional intent.

TOPIC	PROVISION	RECOMMENDATION
		Additionally, if the original borrower remains liable on the loan, there should be no need for the new, additional borrower to meet the § 1026.43 requirements because the creditor continues to rely on the original borrower for repayment, and does not rely on the income or assets of the new borrower. *See* the Fannie Mae Servicing Guide § 407, which states: "The servicer does not need to review the purchaser's credit and financial capacity unless the previous borrower requests a release of liability. The servicer may approve a release of liability if it believes that the purchaser is capable of assuming the mortgage obligations (and the mortgage insurer agrees to the release, if the mortgage loan is insured). If the mortgage insurer does not agree to the release for an insured mortgage loan, Fannie Mae will not grant a release of liability, although the transfer can still be processed without a release of liability."
Residual Income		
11. Need for a residual income test	The section-by-section analysis states: "[T]he Bureau believes that providing broad standards for the definition and calculation of residual income will help preserve flexibility if creditors wish to develop and refine more nuanced residual income standards in the future. The Bureau accordingly does not find it necessary or appropriate to specify a detailed methodology in the final rule for consideration of residual income." * * * "The Bureau expects to study residual income further in preparation for the five-year review of this rule required by the Dodd-Frank Act."	Creditors need substantially more certainty before the effective date of the regulation on how to define and calculate residual income and what level of residual income is sufficient. We strongly urge the CFPB not to wait years before establishing residual income standards. We instead recommend permitting use of the VA residual income test, at least until the CFPB creates a replacement test.

TOPIC	PROVISION	RECOMMENDATION
	78 Fed. Reg. at 6487 and 6528 (Jan. 30, 2013).	
12. Identifying and quantifying items relevant to residual income, and determining what residual income is sufficient	Comment 43(c)(1)-1.ii.B.*5* provides that evidence that a creditor's ability-to-repay determination was not reasonable or in good faith may include: "The creditor disregarded evidence that the consumer may have insufficient residual income to cover other recurring obligations and expenses, taking into account the consumer's assets other than the property securing the loan, after paying his or her monthly payments for the covered transaction, any simultaneous loans, mortgage-related obligations, and any current debt obligations[.]" In addition, to make non-QM loans under § 43(c), creditors are required to consider either residual income or DTI, but neither is specified. To make higher-priced QM under § 43(e)(1)(ii)(B), creditors must be able to determine: "that the consumer's income, debt obligations, alimony, **child support**, and the consumer's monthly payment (including mortgage-related obligations) on the covered transaction and on any simultaneous loans of which the creditor was aware at consummation would leave the consumer with **insufficient residual income or assets** other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan with which to meet **living expenses**, including any **recurring and material non-debt obligations** of which the creditor was aware at the time of consummation."	Both §§ 43(c) and 43(e) use a residual income concept, but the regulation and commentary do not set any standard. Clarity is needed in identifying which items are and are not relevant to residual income, how to quantify the relevant items, whether the household is relevant or only the applicant, and in determining how much residual income is or is not sufficient. Further, it is not clear whether the same standards apply under §§ 43(c) and 43(e). Identifying what is relevant to residual income It is quite unclear what is included in and excluded from residual income. • Under § 43(c), what expenses, other than those enumerated in § 43(c)(2)(i) through (vi), are relevant to residual income? • Does the characterization of these fees as "obligations" in comment 43(c)(1)-1.ii.B.*5* mean to exclude amounts spent on food, clothing, and gasoline because they are largely discretionary? What is the comparable standard under § 43(e)? • Under § 43(e)(1)(ii)(B), what are living expenses, and recurring and material non-debt obligations? • Is discretionary spending relevant? • If one borrower pays a recurring child care bill while another borrower does not, is child care a recurring obligation for either borrower? • To what extent are child care expenses, medical costs, food costs, utilities, transportation costs, or federal, state and local income taxes included or excluded?

TOPIC	PROVISION	RECOMMENDATION
	The regulation and commentary do not define the terms above in bold. Comment 43(e)(1)(ii)-1 provides: "For example, a consumer may rebut the presumption with evidence demonstrating that the consumer's residual income was insufficient to meet living expenses, such as food, clothing, gasoline, and health care, including the payment of recurring medical expenses of which the creditor was aware at the time of consummation . . . ."	<u>Quantifying the amounts for residual income items</u> • On what basis is the creditor is to determine the amounts of the relevant residual income items? • Can creditors rely on information provided by the consumer? • What if the consumer does not track the relevant items? • To what extent can creditors rely on average amounts instead of having to obtain customer-specific information? • Do utility bills vary by geography? • Do the relevant costs include actual costs even if part of the actual cost is discretionary? • If a consumer informs a creditor about non-debt obligations or expenses, must the creditor document and verify them? <u>Consumer or household?</u> It appears under § 43(c) and 43(e) that residual income is computed solely using the consumer's information. • Should creditors consider only the information of applicants? • If the transaction is subject to the right to cancel so that an owner who is not a borrower is defined as a "consumer" under § 2(a)(11), must or may that individual's information also be considered? • Should creditors consider information of other household members who are neither borrowers nor owners? • May creditors consider "income and assets to which the consumer has a reasonable expectation of access" as under the recently finalized Card Act standard, 12 C.F.R. § 1026.51(a)(1)(ii)? <u>What amount of residual income is sufficient?</u> How are creditors and consumers to determine whether residual income is sufficient with neither numerical guidelines nor concrete guidance on

TOPIC	PROVISION	RECOMMENDATION
		the factors that creditors must consider? For each of these questions, an answer is needed under both § 43(c) and § 43(e)
13. Living expenses	Comment 43(c)(1)-1.ii.B.*5* provides that evidence that a creditor's ability-to-repay determination was not reasonable or in good faith may include: "The creditor disregarded evidence that the consumer may have insufficient residual income to cover other **recurring obligations and expenses**, taking into account the consumer's assets other than the property securing the loan, after paying his or her monthly payments for the covered transaction, any simultaneous loans, mortgage-related obligations, and any current debt obligations[.]" Comment 43(c)(1)-1.ii.C provides: "[A]n ability-to-repay determination may be unreasonable or not in good faith even though the consumer made timely payments for a significant period of time if, for example, the consumer was able to make those payments only by foregoing **necessities** such as food and heat."	Do recurring obligations and expenses in comment 43(c)(1)-1.ii.B.*5* differ from necessities in comment 43(c)(1)-1.ii.C?
14. Basis for determination	Comment 43(c)(2)-1 provides: "A creditor may, but is not required to, look to guidance issued by entities such as the Federal Housing Administration, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or Fannie Mae or Freddie Mac while operating under the	We request confirmation that reliance on agency and GSE guidance, or on appendix Q, is *per se* compliance with § 43. We also request confirmation that a creditor that relies on the VA residual income standards, even for non-VA loans, cannot later be found to have "disregarded evidence that the consumer may have insufficient residual income" within the meaning of comment 43(c)(1)-1.ii.B.5; and

TOPIC	PROVISION	RECOMMENDATION
	conservatorship of the Federal Housing Finance Agency."	cannot be found to have left the consumer with insufficient residual income or assets with which to meet living expenses andrecurring and material non-debt obligations under § 43(e)(1)(ii)(B).
15. Consistence with ECOA and FCRA	Comment 43(c)(1)-2 provides: "A change in the consumer's circumstances after consummation (for example, a significant reduction in income due to a job loss or a significant obligation arising from a major medical expense) that cannot be reasonably anticipated from the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule. However, if the application or records considered at or before consummation indicate there will be a change in a consumer's repayment ability after consummation (for example, if a consumer's application states that the consumer plans to retire within 12 months without obtaining new employment or that the consumer will transition from full-time to part-time employment), the creditor must consider that information under the rule." Comment 43(c)(1)-3 provides: "Section 1026.43(c)(1) does not require or permit the creditor to make inquiries or verifications prohibited by Regulation B, 12 CFR part 1002."	To the extent that a creditor may need to ask about health care expenses, child care expenses, income and obligations of household members including a spouse, and medical information, the requirements could conflict with ECOA and FCRA requirements. Section 43(c)(2)(vi) requires consideration of a consumer's "child support[.]" Not requiring or permitting a creditor to ask a consumer who is expecting a child about future child support is insufficient to remove the conflict of laws because it does not address whether the information the creditor may not request is relevant to ability-to-repay determinations. We request more guidance about how creditors can request and evaluate information as required or permitted under § 43 without violating either ECOA or FCRA.
Loan Originator Compensation Regulation		
16. Bonus as proxy	Section 36(d)(1)(iv) permits compensation to a loan originator from a non-deferred profits-based compensation plan that is determined with reference to the profits of the person from mortgage-related business, if, among other things:	We request clarification that any such bonus is *per se* not a proxy for loan terms under § 36(d)(1).

TOPIC	PROVISION	RECOMMENDATION
	• The compensation paid to an individual loan originator does not in the aggregate exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation plan is paid; or • The individual was a loan originator for ten or fewer transactions consummated during the 12-month period preceding the date of the compensation determination.	
17. EEOC guidance against using credit reports and criminal histories	The EEOC provides guidance that inquiry into a job applicant's credit rating and similar information "generally should be avoided but that "[e]xceptions exist if the employer can show that such information is essential to the particular job in question." The EEOC also discourages employers from using arrest and conviction records as an absolute measure to prevent an individual from being hired except to the extent that it is evident that the applicant cannot be trusted to perform the duties of the position when considering the circumstances.	We request confirmation that the background checks required by § 36 are "essential to the particular job on question." We request confirmation that when § 36 prohibits employing a person because of a criminal history that this means "it is evident that the applicant cannot be trusted to perform the duties of the position" within the meaning of the EEOC's language.

MEDIUM PRIORITY

<table>
<tr><th>TOPIC</th><th>PROVISION</th><th>RECOMMENDATION</th></tr>
<tr><td colspan="3" align="center">Ability to Repay</td></tr>
<tr><td>18. Relevance of oral information</td><td>The section-by-section analysis provides:

"[A] consumer may seek to show that a loan does not meet the requirements of a qualified mortgage by relying on information provided orally to the creditor or loan originator to establish that the debt-to-income ratio was miscalculated. Alternatively, a consumer may seek to show that the creditor should have known, based upon facts disclosed orally to the creditor or loan originator, that the consumer had insufficient residual income to be able to afford the mortgage. The final rule does not preclude the use of such oral evidence in ability-to-repay cases."

78 Fed. Reg. 6408, 6512 (January 30, 2013). Comment 43(c)(1)-2 provides:

"[I]f the application or records considered at or before consummation indicate there will be a change in a consumer's repayment ability after consummation (for example, if a consumer's application states that the consumer plans to retire within 12 months without obtaining new employment or that the consumer will transition from full-time to part-time employment), the creditor must consider that information under the rule."</td><td>The comment appears to limit the creditor's required consideration to "the application or records[,]" which may be inconsistent with the section-by-section analysis. Or are there some types of orally volunteered information that the creditor must consider but other types of information that only need to be considered if they are written?</td></tr>
<tr><td>19. Credit history, DTI, and residual income</td><td>Comment 43(c)(2)(viii)-1 provides:

"'Credit history' may include factors such as the number and age of</td><td>• For a non-QM loan, must there be some difference between DTI requirements, residual income requirements, or both, for applicants with good history compared to applicants with poor history to</td></tr>
</table>

	credit lines, payment history, and any judgments, collections, or bankruptcies. . . . The rule also does not specify which aspects of credit history a creditor must consider or how various aspects of credit history should be weighed against each other or against other underwriting factors. Some aspects of a consumer's credit history, whether positive or negative, may not be directly indicative of the consumer's ability to repay. A creditor therefore may give various aspects of a consumer's credit history as much or as little weight as is appropriate to reach a reasonable, good faith determination of ability to repay." Comment 43(c)(7)-3 provides: "The creditor may consider factors in addition to the monthly debt-to-income ratio or residual income in assessing a consumer's repayment ability."	demonstrate that the creditor considered credit history? • Could a creditor's determination to approve a loan to an applicant with a good credit score be appropriate if the DTI and/or residual income requirement were less strict, on the basis that credit history shows willingness to repay but not ability to repay? • Is it sufficient to consider credit history in determining whether to make the loan but not the DTI and/or residual income requirements?
20. Relevance of LTV to ability to repay	Comment 43(c)(1)-1.ii.A.*2* provides that evidence that a creditor's ability-to-repay determination was reasonable and in good faith includes: "The creditor used underwriting standards that have historically resulted in comparatively low rates of delinquency and default during adverse economic conditions[.]"	Neither the general ability to repay standard nor the QM standard require a creditor to consider the LTV. Loans with higher LTVs have higher delinquency rates during adverse economic conditions. If a creditor's underwriting standards do not treat high-LTV loans in a more conservative manner than low-LTV loans, is this evidence that the creditor's determination of ability to repay was not reasonable and in good faith?
21. Community lending exemption	Section 43(a)(12) defines simultaneous loan as: "another covered transaction or home equity line of credit subject to § 1026.40 that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction or, if to be made after consummation, will cover closing costs of the first covered transaction."	The May 2013 ability-to-repay amendments provide an exemption from the ability to repay requirement for certain creditors who typically make subordinate loans or forgivable grants for closing costs and down payment assistance. We request confirmation that the subordinate lien or forgivable grant would not be a "covered transaction" or a "simultaneous loan" that the senior creditor must consider for ability-to-repay purposes. • Otherwise, we request guidance on how the senior creditor should

		consider this simultaneous loan. The creditor may not be able to accurately determine the payment amount on these loans. • If the subordinate lien or forgivable grant is not a simultaneous loan, it is not clear how the senior creditor could verify the exemption. We suggest that the CFPB or HUD provide a website listing exempt entities. • We request guidance on how to verify the status of non-profits and whether they meet the requirements of the exemption.
Affiliate Fees		
22. Exemptions from points and fees		We request confirmation that points and fees do not include items paid to a creditor's affiliate that are none of the following: • Finance charge items under § 4(a) or (b); • Section 4(c)(7) charges; • Insurance items listed in §§ 32(b)(1)(iv) or (b)(2)(iv).
23. Creditor-paid affiliate fees	Comment 32(b)(1)(i)-1 provides: "In general, a charge or fee is 'known at or before consummation' if the creditor knows at or before consummation that the charge or fee will be imposed in connection with the transaction, even if the charge or fee is scheduled to be paid after consummation."	We request confirmation that if a creditor, rather than the consumer, pays a charge to an affiliate, the charge is not included in points and fees because it is not "imposed in connection with the transaction."
QM Eligibility		
24. Payments from a subsidy account	Section 43(e)(2)(i) requires QM loans generally to have "regular periodic payments that are substantially equal[.]"	A loan may have substantially equal monthly payments, and a subsidy account, from which a contribution is made to the monthly loan payments for an initial period of time. We request clarification that these loans are eligible to be QM loans, regardless of whether the borrower or the borrower's employer funds the subsidy account.
25. Loan term for balloon and IO loans	Section 43(b)(6) defines the loan term as the period of time to repay the obligation in full. Comment 43(b)(6)-1 gives an example:	For balloon and interest-only loans, is the loan term the "amortization period on which the periodic amortizing payments are based" or the "period of time to pay the obligation in full"?

	"For example, a loan with an initial discounted rate that is fixed for the first two years, and that adjusts periodically for the next 28 years has a loan term of 30 years, which is the amortization period on which the periodic amortizing payments are based."	
Fair Lending		
26. Ability-to-repay and disparate impact		• Will the DOJ or HUD bring disparate impact cases if creditors make only QM loans? • If a creditor has a policy of making only QM loans but one or some loans are later deemed to be non-QM because of ambiguities in appendix Q, will that creditor be more susceptible to disparate impact liability? • Guidance on how to reconcile the conflicting policy goals of ability-to-repay requirements and disparate impact would most helpful.
Record Retention		
27. Record retention	Section 25(a) (in the QM rule) and 25(c)(2) (in the loan originator compensation rule) require: • Creditors to retain evidence of compliance with Regulation Z for two years; and • Creditors to "records sufficient to evidence all compensation" it pays to loan originators for three years. • Loan originator organizations to retain "records sufficient to evidence all compensation" it receives, or that it pays to an individual loan originator, for three years.	We request confirmation that this does not require each consumer mortgage creditor nationwide to retain records showing every GSE standard applicable to each loan, every DU and LP amendment, and all information input into DU or LP for every QM loan. We also request confirmation that it does not require retaining all information showing how interest rate reductions for discount points were determined.
Loan Originator Compensation and Qualification		
28. Employees who change jobs but not employers	Comment 36(f)(3)(i)-3 provides: "Section 1026.36(f)(3)(i) does not require the loan originator organization to obtain the covered information for an individual whom the loan originator organization hired as a loan originator on	We request confirmation that this exemption also applies for an employee who ceases to be a loan originator but remains with the same employer, then returns to a loan originator position still with the same employer.

	or before January 10, 2014, and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization is subject to the requirements of § 1026.36(f)(3)(i).”	

LOWER PRIORITY

<table>
<tr><th>TOPIC</th><th>PROVISION</th><th>RECOMMENDATION</th></tr>
<tr><td colspan="3" align="center">Points and Fees</td></tr>
<tr><td>29. Hazard and credit property insurance</td><td>Section 32(b)(1)(i) includes in points and fees certain finance charge items. The finance charge definition excludes “any charge of a type payable in a comparable transaction.” § 4(a). Hazard is a type of charge payable in a cash purchase, and should not be in points and fees.

Section 32(b)(1)(iv) includes in points and fees (emphasis added):

“Premiums or other charges payable at or before consummation for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract[.]”

Comment 32(b)(1)(iv) explains that credit property insurance does not include homeowners’ insurance because homeowners’ insurance covers the consumer’s property interest. It also explains that accident insurance premiums are included on points and fees only if the consumer is not a beneficiary:

“2. Credit property insurance. Credit property insurance includes insurance against loss of or damage to personal property, such as a houseboat or manufactured home. Credit property insurance covers the creditor’s security interest in the property. Credit property insurance does not include homeowners’ insurance, which, unlike credit property insurance, typically covers not only the dwelling but</td><td>We request that the comment explicitly exclude from points and fees homeowner’s insurance premiums paid at or before closing. This insurance covers the dwelling attached to real property, including a condominium or cooperative unit, and insures the borrower’s interest, subject to the mortgage. Comment 32(b)(1)(iv) addresses these insurance premiums only indirectly. Consumers purchase homeowner’s insurance in a comparable cash transaction so the premiums are excluded by § 4(a), yet are included in points and fees under comment 32(b)(1)(iv).

Comment 32(b)(1)(iv) states that credit property insurance differs from homeowner’s insurance, but does not make the distinction clear. Is the distinction that credit property insurance insures only the creditor’s security interest, while hazard insurance insures the consumer, subject to the mortgage? If so, we request confirmation that the premiums paid at or before closing for required hazard and flood insurance to a nonaffiliate are not included in points and fees if the consumer is the insured and there is a loss payable mortgagee clause.

Is credit property insurance limited to insurance on personal property such that any insurance on a real property dwelling is hazard insurance, and therefore not included in points and fees as long as it is excluded from the finance charge?

Is credit property insurance in §§ 32(b)(1)(iv) and 32(b)(2)(iv) defined</td></tr>
</table>

TOPIC	PROVISION	RECOMMENDATION
	its contents and protects the consumer's interest in the property. 3. *Life, accident, health, or loss-of-income insurance.* Premiums or other charges for these types of insurance are included in points and fees only if the creditor is a beneficiary. If the consumer or another person designated by the consumer is the sole beneficiary, then the premiums or other charges are not included in points and fees."	the same way as in § 36(i)(2)(i) (which prohibits financing single premium credit insurance)? It is not always clear under state law whether a cooperative is real or personal property. Is insurance required on a cooperative credit property insurance or hazard insurance? Is flood insurance credit property insurance or hazard insurance?
Ability to Repay		
30. Underwriting standards based on empirical information	Comment 43(c)(1)-1.i is intended to permit creditors to select and amend their underwriting requirements: "Section 1026.43(c) and the accompanying commentary describe certain requirements for making this ability-to-repay determination, but do not provide comprehensive underwriting standards to which creditors must adhere. For example, the rule and commentary do not specify how much income is needed to support a particular level of debt or how credit history should be weighed against other factors. So long as creditors consider the factors set forth in § 1026.43(c)(2) according to the requirements of § 1026.43(c), 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."	Underwriting is in part a matter of judgment. There is a large body of underwriting studies, the extent to which they are empirical is debatable, and they often conflict. This comment could result in litigation over which empirical information a creditor should have used, which would be just as subjective as having no "empirical" standard at all. We suggest removing the phrase "empirical information and" from the last sentence quoted.
31. Comparatively low rates of delinquency and default	Comment 43(c)(1)-1.ii.A.*2* provides that evidence that a creditor's ability-to-repay determination was reasonable and in good faith includes: "The creditor used underwriting standards that have historically resulted in comparatively low rates of delinquency and default	We request a definition of the term "comparatively low[.]" The comparison will vary greatly depending on which types of loans are compared, so additional guidance is needed on how to make the comparison. All delinquencies are defaults, but not all defaults are delinquencies.

TOPIC	PROVISION	RECOMMENDATION
	during adverse economic conditions[.]"	Nonpayment defaults are irrelevant to ability to repay. The regulation should not apply to, or consider, defaults other than delinquencies. The same clarification is needed in comment 43(c)(1)-1.ii.B.*1*.
32. Reliance on consumer statements	Comment 43(c)(1)-1.i provides: "A consumer's statement or attestation that the consumer has the ability to repay the loan is not indicative of whether the creditor's determination was reasonable and in good faith."	We request clarification that a statement by a consumer that the information in a loan application or in another specified document is complete, accurate, and not misleading demonstrates the information about which the creditor was aware at closing, unless the consumer provides credible contrary evidence.
33. Evidence that an ability-to-repay determination was not reasonable or in good faith	Comment 43(c)(1)-1.ii.B.*1* provides that evidence that a creditor's ability-to-repay determination was not reasonable or in good faith may include: "The consumer defaulted on the loan a short time after consummation or, for an adjustable-rate, interest-only, or negative amortization mortgage, a short time after recast[.]"	A showing of inability to repay should require proof that, based on information on which the creditor reasonably relied, including information the consumer provided to the creditor, the creditor's determination was faulty. We recommend the following clarifications: • If a payment default was reasonably unforeseeable at or before consummation, that payment default should be *per se* irrelevant. • If a consumer directly or indirectly provided inaccurate information to a creditor who reasonably relied on it, the fact that it was inaccurate should be *per se* irrelevant to the question whether the creditor's ability-to-repay determination was proper.
34. Length of timely payments as an indicator of ability to repay	Comment 43(e)(1)(ii)-1 provides: "In addition, the longer the period of time that the consumer has demonstrated actual ability to repay the loan by making timely payments, without modification or accommodation, after consummation or, for an adjustable-rate mortgage, after recast, the less likely the consumer will be able to rebut the presumption based on insufficient residual income and prove that, at the time the loan was made, the creditor failed to make a reasonable and good faith determination that the consumer had the reasonable ability to repay	This will encourage consumers of QM loans outside the safe harbor to strategically make at least one late payment early after consummation to preserve the ability to rebut the presumption. This comment appears to assume that the payment increases after recast, and that the payments before recast are irrelevant. Some ARM loans with a long introductory period have an initial rate that is higher than the fully-indexed rate. We recommend clarification that rebutting the presumption requires

TOPIC	PROVISION	RECOMMENDATION
	the loan."	showing *inability* to repay, and that mere nonpayment should be *per se* irrelevant. We recommend clarification that a strategic default is *per se* irrelevant. We recommend that timely payments on an ARM loan before recast should be evidence of ability to repay, even if the payment will increase after recast. That the payment will increase at recast is relevant, but so are a payment decrease after recast, and a pattern of making timely payments.
35. Verification of property taxes with government-provided information	Comment 43(c)(3)-5 provides: "With respect to the verification of mortgage-related obligations that are property taxes required to be considered under § 1026.43(c)(2)(v), a record is reasonably reliable if the information in the record was provided by a governmental organization, such as a taxing authority or local government. The creditor complies with § 1026.43(c)(2)(v) by relying on property taxes referenced in the title report if the source of the property tax information was a local taxing authority."	We request clarification that the phrase "provided by a governmental organization" means directly or indirectly provided by a governmental organization, such as in the title report example, but also in other cases, such as when a service provider obtains the information and provides it to a creditor.
36. Debt or liability specified in appendix Q	Comment 43(e)(2)(v)-3 provides: "Section 1026.43(e)(2)(v)(B) requires creditors to consider and verify the consumer's current debt obligations, alimony, and child support. For purposes of this requirement, the creditor must consider and verify, at a minimum, any debt or liability specified in appendix Q. A creditor may also consider and verify other debt in accordance with § 1026.43(c)(2)(vi) and (c)(3); however, such debt would not be included in the total monthly debt-to-income ratio determination required by § 1026.43(e)(2)(vi)."	We request clarification of the term "any debt or liability specified in appendix Q." Appendix Q uses the terms liabilities, recurring obligations, other continuing obligations, and contingent liabilities. Is each of these a "current debt obligation" within the meaning of § 43(e)(2)(v)-3? Or are these appendix Q terms limited to current debt obligations?

LOWER PRIORITY

TOPIC	PROVISION	RECOMMENDATION
37. DTI calculation in § 43(e)(2)(vi) and appendix Q	Under § 43(e)(2)(vi), QM loans must have a DTI not exceeding 43 percent. Section 43(e)(2)(vi) provides: "For purposes of this paragraph (e)(2)(vi), the ratio of the consumer's total monthly debt to total monthly income is determined: (A) Except as provided in paragraph (e)(2)(vi)(B) of this section, in accordance with the standards in appendix Q; (B) Using the consumer's monthly payment on: (*1*) The covered transaction, including the monthly payment for mortgage-related obligations, in accordance with paragraph (e)(2)(iv) of this section; and (*2*) Any simultaneous loan that the creditor knows or has reason to know will be made, in accordance with paragraphs (c)(2)(iv) and (c)(6) of this section." Comment 43(e)(2)(vi) provides: "As provided in appendix Q, for purposes of § 1026.43(e)(2)(vi), creditors must include in the definition of 'debt' a consumer's monthly housing expense. This includes, for example, the consumer's monthly payment on the covered transaction (including mortgage-related obligations) and on simultaneous loans. Accordingly, § 1026.43(e)(2)(vi)(B) provides the method by which a creditor calculates the consumer's monthly payment on the covered transaction and on any simultaneous loan that the creditor knows or has reason to know will be made."	We request clarification of the specific provisions within appendix Q to which § 43(e)(2)(vi)(A) refers. We request clarification that the comment language means: "~~As provided in appendix Q, f~~**F**or purposes of § 1026.43(e)(2)(vi), creditors must include in the definition of 'debt' a consumer's monthly housing expense. This **housing expense** includes~~, for example,~~ **only** the consumer's monthly payment on the covered transaction (including mortgage-related obligations) and on simultaneous loans."

TOPIC	PROVISION	RECOMMENDATION
38. Contingent liabilities	Comment 43(c)(2)(vi)-2 provides: "If one consumer [of multiple applicants] is merely a surety or guarantor, § 1026.43(c)(2)(vi) does not require a creditor to consider the debt obligations of such surety or guarantor." Comment 43(c)(2)(viii)-2 provides: "When two or more consumers apply for an extension of credit as joint obligors with primary liability on an obligation, § 1026.43(c)(2)(viii) requires a creditor to consider the credit history of all such joint applicants. If a consumer is merely a surety or guarantor, § 1026.43(c)(2)(viii) does not require a creditor to consider the credit history of such surety or guarantor."	We request clarification of whether the potential liability of an applicant for a non-QM loan as a surety or guarantor under a different loan should be included in the applicant's debt obligations.
39. Verification of simultaneous loan by promissory note	Comment 43(c)(3)-4 provides: "If the 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 third-party creditor of the simultaneous loan. For example, the creditor may obtain a copy of the promissory note or other written verification from the third-party creditor. For further guidance, see comments 43(c)(3)–1 and –2 discussing verification using third-party records." The referenced comments do not relate to simultaneous loans. The relevant portions provide: "Records a creditor uses for verification under § 1026.43(c)(3) and	The suggestion that a creditor verify a loan that has not closed by obtaining the promissory note is unclear because the note will not exist. The creditor of an intended simultaneous loan may not provide verification for any reason, including that the existence and terms of the loan are not yet certain. We request clarification that when a third-party creditor of a simultaneous loan does not provide verification, the creditor may rely instead on a borrower's statement about the fact of, and the terms of, any simultaneous loan. If available from the consumer, the creditor should be able to rely on a copy of the application for the simultaneous loan.

TOPIC	PROVISION	RECOMMENDATION
	(4) must be specific to the individual consumer. . . . A creditor also may obtain third-party records directly from the consumer, likewise as long as the records are reasonably reliable and specific to the individual consumer.”	
40. Water bills should be excluded from mortgage-related obligations	Comment 43(b)(8)-2 includes property taxes, defined broadly, in mortgage-related obligations: “Section 1026.43(b)(8) includes obligations that are equivalent to property taxes, even if such obligations are not denominated as ‘taxes.’ For example, governments may establish or allow independent districts with the authority to impose levies on properties within the district to fund a special purpose, such as a local development bond district, water district, or other public purpose. These levies may be referred to as taxes, assessments, surcharges, or by some other name. For purposes of § 1026.43(b)(8), these are property taxes and are included in the determination of mortgage-related obligations.”	Certain services, such as water, sewer or trash services may be provided by either a private company or a government. Where a government imposes charges for such services, the charges should be explicitly excluded from mortgage-related obligations because they have no relation to the mortgage loan.
Refinance of Nonstandard Loan		
41. Use of proceeds of standard mortgage	Section 43(d)(1)(ii)(E) provides that proceeds of a standard mortgage may be used only to pay off the nonstandard loan and to pay closing costs required to be disclosed under RESPA. Comment 43(d)(1)(ii)(E)-1 provides: “If the proceeds of a covered transaction are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not meet the definition of a ‘standard mortgage.’”	We suggest the proceeds also be able to be used to pay for a payoff statement and a lien release on the nonstandard loan, and, for a shared appreciation nonstandard loan, an appraisal to determine the payoff amount. These would be consistent with the intent of the regulation and comment.

LOWER PRIORITY

TOPIC	PROVISION	RECOMMENDATION
42. Thirty days as "generally" a reasonable amount of time	Under § 43(d)(5)(i)(A), in calculating the payment on a nonstandard mortgage, creditors may use the fully-indexed rate as of a reasonable of time before or after the creditor receives the application. Comment 43(d)(5)(i)-2 provides: "Thirty days is **generally** considered 'a reasonable period of time'" (emphasis added).	We recommend removing the word "generally" because it creates substantial uncertainty for no apparent reason. If the word remains, we request clarification of all circumstances under which thirty days would not be a reasonable amount of time. When thirty days is not a reasonable amount of time, we request clarification of how the creditor is to know what is reasonable. Refinancing nonstandard loans that the borrowers can afford into standard loans with materially lower payments are a clear borrower benefit and do not raise ability-to-repay concerns. There should be as few restrictions on this consumer benefit as is reasonably possible.
43. Payment calculation for nonstandard loan – relevance of actual prepayments	In calculating the payment on a nonstandard loan under § 43(d)(5)(i), it is not clear whether the creditor must take into account any actual prepayments on the nonstandard loan. For IO loans, § 43(d)(5)(i)(C)(*2*) directs the creditor to base the calculation of the payment on a nonstandard loan on: "[T]he outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date[.]" Comment 43(d)(5)(i)-6 provides: "First, the payment must be based on the outstanding principal balance as of the date of the recast, assuming all scheduled payments are made under the terms of the legal obligation in effect before the mortgage is recast. For a loan on which only interest and no principal has been paid, the outstanding principal balance at the time	We request clarification of the calculation for a nonstandard loan on which the consumer has made optional prepayments before recast.

TOPIC	PROVISION	RECOMMENDATION
	of recast will be the loan amount, as defined in § 1026.43(b)(5), assuming all scheduled payments are made under the terms of the legal obligation in effect before the mortgage is recast. For example, assume that a mortgage has a 30-year loan term, and provides that the first 24 months of payments are interest-only. If the 24th payment is due on September 1, 2015, the creditor must calculate the outstanding principal balance as of September 1, 2015, assuming that all 24 payments under the interest-only payment terms have been made and credited timely and that no payments of principal have been made.” Even if all scheduled payments are made, it is possible that the borrower made some optional prepayments. The example in this comment assumes the consumer has made no principal payments, and the example in comment 43(d)(5)(i)-7 also assumes the consumer has made no principal payments. The explanation of the issue concerns an IO loan, but the same question arises for actual prepayments on a nonstandard ARM loan. For negative amortization loan, comment 43(d)(5)(i)-8.i provides: “If the consumer makes payments above the minimum periodic payments for the maximum possible time, the creditor must calculate the maximum loan amount based on the outstanding principal balance.” It is unclear why this example is limited to a consumer who makes payments above the minimum requirement “for the maximum possible time” as opposed to a shorter period. Is this the only circumstance in	

TOPIC	PROVISION	RECOMMENDATION
	which the creditor must consider the actual outstanding principal balance?	
Loan Originator Compensation and Qualification		
44. Revising compensation plans	Comment 36(d)(1)-6 (in the loan originator compensation rule) provides: "Section 1026.36 does not limit a creditor or other person from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must not result in payments to the loan originator that are based on the terms of a credit transaction. A creditor or other person might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator."	How often can compensation change, and can it change in response to loan production?
45. Long term loan performance	Comment 36(d)(1)-2.i.B permits compensation based on the long-term performance of an originator's loans.	What is the definition of long-term performance? If a loan originator will receive a payment each month after origination that the loan is not delinquent, would all such payments be considered payments for long-term loan performance?
46. EEOC guidance against using credit reports and criminal histories	The EEOC provides guidance that inquiry into a job applicant's credit rating and similar information "generally should be avoided but that "[e]xceptions exist if the employer can show that such information is essential to the particular job in question." The EEOC also discourages employers from using arrest and conviction records as an absolute measure to prevent an individual from being hired except to the extent that it is evident that the applicant cannot be trusted to perform the duties of the position when considering the circumstances.	We request confirmation that the background checks required by § 36 are "essential to the particular job on question." We request confirmation that when § 36 prohibits employing a person because of a criminal history that this means "it is evident that the applicant cannot be trusted to perform the duties of the position" within the meaning of the EEOC's language.

TOPIC	PROVISION	RECOMMENDATION
	Appendix Q	
47. Applicability	Appendix Q is entitled *Appendix Q to Part 1026—Standards for Determining Monthly Debt and Income.*	We request confirmation that appendix Q applies only to § 43(e)(2)(v) and (vi), and that it does not apply to debt and income determinations under § 43(c).
48. Conclusive evidence of no debt collection	Appendix Q § IV.2 provides: "The contingent liability policies described in this topic apply unless the consumer can provide conclusive evidence from the debt holder that there is no possibility that the debt holder will pursue debt collection against him/her should the other party default."	We request confirmation that copies of cancelled checks that the debt holder cashed are sufficient, even if they are not obtained from the debt holder.
49. Income reasonably expected to continue	The CFPB removed language from § I.B.1.a about income reasonably expected to continue "through at least the first three years of the mortgage loan."	We request clarification of how far into the future creditors must reasonably expect income to continue.
50. Cost of tax transcripts	The CFPB removed two statements, in §§ I.B.7 note iii and I.C, that the cost of the transcript may be charged to the consumer.	We request clarification that that this change does not prohibit the creditor from charging the consumer for the transcript if otherwise permitted by law.
	Other	
51. Definition of "offer" for alternative offer	Section 43(g)(3) provides: "A creditor must not offer a consumer a covered transaction with a prepayment penalty unless the creditor also offers the consumer an alternative covered transaction without a prepayment penalty . . . ."	When a loan is offered is not clear. We suggest clarification that a creditor may comply by documenting that the creditor made the consumer aware of the alternative covered transaction.
52. Fully-indexed rate for step-rate loans	Comment 43(c)(5)(i)-5.iii describes a "fully-indexed rate" for a step-rate loan: "A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the interest rate will be 6.5 percent for the first two years of the loan, 7 percent for the next three years of the	We recommend clarification that step-rate loans do not have a fully-indexed rate, and that their payment calculation under § 43(c)(5)(i) uses the maximum rate that may apply during the loan term. Otherwise, § 43(c)(5)(i)(A) would appear to use the introductory rate on a step-rate loan, which was not the intent.

TOPIC	PROVISION	RECOMMENDATION
	loan, and 7.5 percent thereafter. Accordingly, the scheduled payment amounts are $1,264 for the first two years, $1,328 for the next three years, and $1,388 thereafter for the remainder of the term. For purposes of § 1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1,398, which is the substantially equal, monthly, fully amortizing payment that would repay $200,000 over 30 years using the fully indexed rate of 7.5 percent." Section 43(b)(3) defines a fully-indexed rate as a rate that applies after recast, and recast is not defined for step-rate loans.	
53. Nonjudicial foreclosure	Section 36(h) provides: "A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction."	We request confirmation that this does not prohibit nonjudicial foreclosure in the event of any default.
54. FHA or Regulation Z definition of loan amount	Section 32(b)(1)(i)(C)(2) includes upfront PMI premiums in points and fees only if the premiums exceed an FHA premium amount: "If the premium or other charge is payable at or before consummation, [points and fees exclude] the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically	When calculating what portion of a non-FHA upfront MIP is included in points and fees in Regulation Z, we request clarification and examples of how to calculate the loan amount, and whether it varies based on whether the borrower finances the upfront MIP. The borrower may not decide whether to finance an MIP or pay it at closing until late in the origination process. Creditors need to know the amount of points and fees as early as possible. For this reason, we recommend that the amount included in points and fees may be calculated as if the consumer will finance the amount, even if the

TOPIC	PROVISION	RECOMMENDATION
	issued upon notification of the satisfaction of the underlying mortgage loan[.]" FHA upfront premiums are calculated as a percentage of the "base loan amount" without the premium even if the borrower finances the premium. FHA Mortgagee Letter 2012-4 provides: "FHA will continue to permit financing of this [upfront MIP] charge into the mortgage and will continue to calculate actual premium charges against the base loan amount before adding any financed UFMIP." Section 32(b)(4)(i) defines the total loan amount as: "The total loan amount for a closed-end credit transaction is calculated by taking the amount financed, as determined according to § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii) [4(c)(7) fees], (iv) [credit insurance, etc.] or (vi) [prepayment penalties] that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor." The referenced § 18(b) defines "amount financed" to include the principal loan amount: "The amount financed is calculated by: (1) Determining the principal loan amount or the cash price (subtracting any downpayment); (2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and	consumer later decides not to do so.

TOPIC	PROVISION	RECOMMENDATION
	(3) Subtracting any prepaid finance charge." This definition deducts amounts financed only if they are not part of the finance charge. MIPs are part of the finance charge, § 4(b)(5), meaning that, under § 32(b)(4)(i), MIPs are included in the amount financed if the borrower finances them. Section 43(b)(5) defines loan amount as: "*Loan amount* means the principal amount the consumer will borrow as reflected in the promissory note or loan contract." If a borrower finances a finance charge item, such as an upfront MIP, it may or may not be included in the promissory note. *See* comment 18(b)(3).	
55. Typographical error	Comment 43(c)(5)(i)-5.iii gives an example of the same payment amount on a loan, once as $1388 and once as $1398. Both should be $1398.	