

Update

Paycheck Protection Program Updates

The House of Representatives passed a two-month PPP extension on a 415-3 vote. The bill would extend the deadline for new Paycheck Protection Program (PPP) loans through May 31, 2021. The bill also grants the Small Business Administration (SBA) an additional month to process loan applications submitted by the new deadline before the program ends on June 30. A companion bill has been introduced in the Senate.

SBA Guidance on Revising Schedule C PPP Applications

The SBA released updates to its PPP FAQs and calculation guidance documents to reflect new options available to Schedule C-filing PPP applicants to use gross income to calculate their loan amount. Updates include options lenders have to help Schedule C borrowers who applied using the prior income calculation formula. House Small Business Committee Chair Nydia Velazquez indicated she is working with the SBA and Republicans to address concerns of Schedule C borrowers.

[Read the FAQs](#)

Revenue Reduction and Maximum Loan Amount Calculations

SBA also issued updated guidance documents on revenue reduction and maximum loan amount calculations for both first-draw and second-draw PPP loans.

[Read the First-Draw Loan Guidance](#)

[Read Second-Draw Loan Guidance](#)

SBA Accepting Second-Draw PPP Applications from 2021 First-Draw Borrowers:

The SBA is now accepting second-draw PPP loan applications from borrowers who previously submitted first-draw loan applications in 2021. Two additional organizational types, single member LLCs and qualified joint-venture (spouses) were added that can be used by borrowers when using the Schedule C gross income PPP calculation.

Funding

According to the SBA, about \$92.5 million in PPP funds remains. As of March 14, 42,718 PPP loans for a total of \$1.4 billion have been approved in Nebraska. Nationwide, 2,739,834 loans for a total of \$181 billion have been approved in 2021. Banks accounted for 80% of those loans.

[Learn More](#)

Time Change for the Next Government Relations Virtual Update

Stay informed on the progress of state legislation by attending the next state legislative update on Wednesday, April 7, at **8:00 a.m. CDT**. The time has been changed to allow members to also attend the [Spring Agri-business Conference](#). Advance registration is required.

[Register](#)

Comments Requested on Private Flood Insurance Guidance

The Department of the Treasury, the Federal Reserve the Federal Deposit Insurance Corporation, the Farm Credit Administration and the National Credit Union Administration jointly released 24 proposed questions and answers (Q&As) about private flood insurance. The new Q&As cover both mandatory and discretionary acceptance of private flood insurance for loans subject to the mandatory purchase requirement, as well as general flood compliance guidance. The agencies noted that the proposed Q&As are intended to help lenders comply with the private flood insurance provision of the Biggert-Waters Flood Insurance Reform Act of 2012. Comments on the proposed additions to the A&As are due 60 days after publication in the Federal Register.

[Read the Q&As](#)

FDIC Report Highlights Farm Banks

Farm banks have held up well despite challenges to the agriculture industry and problem loan levels have remained modest, according to a new report from the FDIC. Cautious real estate lending during a boom in farmland values has given farm banks the flexibility to work with financially stressed borrowers by tapping into their farmland equity. The report also stated 2021 net farm income is expected to increase 46% to \$121.1 billion, due in part to government assistance programs. Next week is National Ag Week and an opportunity to highlight your bank's work with your agricultural customers. Find bank resources [here](#).

[Read the Report](#)

FDIC Meeting of the Advisory Committee of State Regulators

The FDIC will hold a meeting of its Advisory Committee of State Regulators on March 18, at noon CDT. Committee members will discuss and receive updates on a range of policy issues regarding the regulation of state-chartered financial institutions throughout the U.S. and its territories. The meeting's agenda includes a discussion of state banking conditions, a report on FDIC research relating to community banking and agricultural lending, a dialogue regarding state-federal coordination, and an update on the FDIC's office of innovation. The virtual meeting is open to the public.

[Learn More](#)

Guzman Confirmed as Head of the SBA

The Senate confirmed Isabel Guzman to lead the SBA on an 81-17 vote. Guzman previously served as the director of the California Office of the Small Business Advocate and SBA deputy chief of staff during President Obama's administration.

GSE Loan Processing Flexibilities Extended

The Federal Housing Finance Agency extended until April 30 certain previously announced loan processing flexibilities until April. These flexibilities include allowing alternative appraisals on purchase and rate term refinance loans, alternative methods for documenting income and verifying employment before loan closing and expanding the use of power of attorney and remote online notarizations to assist with loan closings.

[Learn More](#)

Congressional Delegation Virtual Meetings

Congressman Adrian Smith is the next member of the Nebraska congressional delegation to join the NBA for a virtual meeting. He is a member of the House Committee on Ways and Means.

Upcoming meetings:

- March 24, 11:00 a.m. CDT – Congressman Adrian Smith
- March 31, 11:00 a.m. CDT – Congressman Don Bacon

These virtual meetings are your opportunity to hear directly from lawmakers and keep up to date on the federal legislation that impacts your bank. Advance registration is required.

[Register](#)



Congressman Adrian Smith

Economic Inclusion and Mobility for Nebraska Families

Join the NBA, the Nebraska Independent Community Bankers, the Nebraska Council on Economic Education and the Federal Deposit Insurance Corporation (FDIC) next month for a webinar on low-cost transaction and savings accounts. It will cover successful outreach from banks and community organizations working to increase the financial capability of Nebraskans. The webinar is April 14 from 1:00 to 2:30 p.m. CT.

[Register](#)

Consumer Satisfaction with Banks

According to a new ABA poll, 86% of Americans are “very satisfied” or “satisfied” with their bank. Nearly three-quarters also approve of their bank’s response to the pandemic. Awareness of their bank’s efforts to help customers experiencing financial hardship improved consumers’ opinion of their bank. The survey also asked consumers about the PPP. Four in 10 respondents who work at a small business said their company received a PPP loan, and 92% of them said it made a difference, with 59% saying it made a major difference. Nine in 10 of these respondents said the PPP loan helped to preserve jobs at that business.

[Read More](#)



ABA Asks Banks to Respond to Economic Impact Survey

ABA wants to capture the good banks have done over the past year in their [interactive economic impact map](#). The map’s success is thanks to bankers who completed a survey providing key data about their institution’s footprint, constituent impact, loans, investments and other contributions. Its continued success depends on keeping that data current, so we are asking banks to participate in the survey again this year. Information and instructions were sent to banks from last week. If you did not receive the information and are interested in receiving a link to participate please contact ABA’s Afifa Klouj at aklouj@aba.com or Mike Mazur at mmazur@aba.com

Compliance Alliance

Q: In a situation where a POA is opening a new account on behalf of a principal who is incarcerated, who must the bank CIP?

A: Although this also depends on each state's definition of legal capacity, the CIP Rule generally applies to "customers" and whether the principal lacks legal capacity can determine who the customer is in this situation. If the accountholder lacks legal capacity and the account is being opened on his or her behalf by the attorney-in-fact, the customer would be the individual with the power-of-attorney. If the individual is opening an account on behalf of the accountholder who is otherwise competent and does not meet the state's definition of lacking legal capacity, the attorney-in-fact is merely acting as an agent on behalf of the accountholder and the bank would CIP the owner of the account.

Reference:

"(c) Customer. For the purposes of §1020.220:

(1) Customer means:

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor;"

31 CFR § 1220.100(c)(1)(ii)(A) https://www.ecfr.gov/cgi-bin/text-idx?SID=c2b0dfc4e48f40a454232a93453afca0&mc=true&node=se31.3.1020_1100&rgn=div8

"1. Who is the "customer" when an account is opened by an individual who has power-of-attorney for a competent person who is the named owner of the account?"

The CIP rule provides that a "customer" generally is "a person that opens a new account." 31 C.F.R. § 103.121(a)(3)(i)(A). When an account is opened by an individual who has power-of attorney for a competent person, the individual with a power-of-attorney is merely an agent acting on behalf of the person that opens the account. Therefore, the "customer" will be the named owner of the account rather than the individual with a power-of-attorney over the account. By contrast, an individual with power-of-attorney will be the "customer" if the account is opened for a person who lacks legal capacity. 31 C.F.R. § 103.121(a)(3)(i)(B)(1)."

CIP FAQs: http://www.fincen.gov/statutes_regs/guidance/pdf/finalciprule.pdf

Not a member? Learn more about membership with Compliance Alliance by attending one of our live demos:

- [Live Demo on Tuesday, March 16, 10:00 a.m. CT](#)
- [Live Demo on Thursday, March 18, 1:00 p.m. CT](#)

Compliance Alliance offers a comprehensive suite of compliance management solutions. To learn how to put them to work for your bank, call (888) 353-3933 or email info@compliancealliance.com and ask for our Membership Team.

March 12, 2021

As of the close of business on Friday, Committee hearings have been completed and priority bill designations will wrap up early next week when the Speaker of the Legislature selects his 25 priority bills. Balancing the state budget and debating priority bills will no doubt dominate the balance of the session. Full-day floor debate will commence in earnest early next week.

NBA AFFIRMATIVE LEGISLATION ADVANCES

The following bills on the NBA Affirmative Legislative Agenda were advanced to Final Reading during floor action on Wednesday morning:

LB 66 – Public Funds Deposit Security Act: Senator Williams (Gothenburg) has introduced a bill (LB 66), on behalf of the NBA, that makes a series of “technical” amendments to the Public Funds Deposit Security Act in recognition of the differences between the “dedicated” method and the “single bank pooled collateral” method of pledging for public funds by changing references from “custodial official” to “governmental unit,” where applicable. In addition, the bill provides for the manner in which a valid and perfected security interest is to be established in securities pledged for public funds under the “single bank pooled collateral” method of pledging for public funds. Finally, the bill clarifies that a bank, capital stock financial institution or qualifying mutual financial institution which is chartered by a foreign state agency as defined in *Neb.Rev.Stat.* Section 8-101.03(13) may serve as a qualified trustee under the “dedicated” and the “single bank pooled collateral” method of pledging for public funds.

LB 94 – Online Notary Public Act: Introduced on behalf of the NBA by the Government, Military and Veterans Affairs Committee, LB 94 would clarify that (1) online notarial acts performed after April 2, 2020 and before July 1, 2020, pursuant to the Governor’s Executive Order No. 20-13; and (2) legal instruments executed during this time period involving online notarial acts shall not be invalidated.

LB 503 – Trust Deeds/Trustee Interpleader Action: Senator Mike Flood (Norfolk) has introduced LB 503 on behalf of the NBA, which would authorize a junior lienholder, in an interpleader action relating to the payment of proceeds of a trustee’s sale, to recover attorney fees from any party objecting, without a good faith reason, to the proposed distribution of funds by the trustee. In response to concerns raised during Select File consideration of the bill, an amendment was adopted to remove provisions of the bill that would have established a “rebuttable presumption” that the objecting party did not do so in good faith, in cases in which a junior lienholder had received a judgment an amount equal to or greater than the portion of funds paid into the court by the trustee to which the holder claimed to be entitled.

NBA SUPPORTED BILLS GIVEN FINAL APPROVAL

The following bills supported by the NBA have been approved by the Legislature and sent to Governor Ricketts for his signature. Since both bills were passed with the “Emergency Clause,” they will take effect the day after being signed into law by the Governor.

LB 23 – Real Property Appraiser Act: Senator Matt Williams (Gothenburg) has introduced legislation that would make “technical corrections” to the existing Real Property Appraiser Act to remain in compliance with the Appraiser Qualification Board’s Real Property Appraiser Qualification Criteria.

LB 363 – Omnibus Department of Banking Bill: Senator Williams is also the sponsor of LB 363 which (1) contains the annual state-chartered bank and savings and loan “wild card” provisions; (2) would replace the terms “undivided profits on hand” and “net profits on hand” with “retained net income” for purposes of dividend distributions; and (3) prohibit a person appointed to fill a vacancy on a trust company board of directors’ from serving as director until approval is obtained from the Department of Banking and would require the President of a trust company to be a member of the board of directors.

BUDGET PACKAGE UNVEILED

The Appropriations Committee has submitted the framework of its \$9.7 billion, two-year state budget. Holding spending growth to an average of 1.5 percent over the next two years, the proposed budget leaves room for about \$390 million to address other legislative priorities.

The Appropriations Committee budget would allocate more than \$1.1 billion toward property tax credits and provides room for other tax-relief measures over the two-year period. Funding for the property tax credit through income tax refunds will increase from \$125 million to \$313 million in the next year, in addition to the existing annual funding of \$275 million for the Property Tax Credit Fund.

REVENUE COMMITTEE ADVANCES TAX CUTS

The Revenue Committee has responded to the rosy fiscal outlook by advancing a series of tax cut measures. Among the measures advancing to General File were:

LB 680 – Income Taxation: Senator Lou Ann Linehan (Elkhorn) has introduced LB 680, which would reduce the tax rate on corporate income in excess of \$100,000 from 7.81 percent to 6.84 percent beginning January 1, 2022.

LB 26 – Sales Tax Exemption: Senator Justin Wayne (Omaha) is the sponsor of LB 26, which would provide a sale and use tax exemption for residential water service. Senator Rich Pahls (Omaha), has designated LB 26 as his individual priority bill.

LB 64 Taxation of Social Security Benefits: Introduced by Senator Brett Lindstrom (Omaha), and designated as a priority bill by Senator Mark Kolterman (Seward), LB 64 would provide, for tax years beginning on or after January 1, 2021, for a phased in reduction of income taxation of Social

Security benefits by 20 percent each year until federal adjusted gross income is reduced by 100 percent of the benefits for tax years beginning on or after January 1, 2025.

The Legislature is also considering legislation (LB 387) to exempt military retirement benefits which would provide additional tax cuts of approximately \$13 million annually and bills (LB 39 and LB 40) which would provide \$10 million annually in tax credits to build youth sports complexes and railroad spurs.

OTHER BILLS OF INTEREST

LB 297 – Nebraska Protection of Vulnerable Adults From Financial Exploitation Act:

Lawmakers have given second round approval to LB 297, a measure introduced by Senator Lindstrom, which would authorize qualified persons (any broker-dealer, investment advisor, agent, investment advisor representative, or person who serves in the supervisory, compliance, or legal capacity for a broker-dealer or investment advisor) to notify Adult Protective Services Division of the Department of Health and Human Services and the Department of Banking and Finance in any case in which the qualified person reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is occurring or been attempted. The bill would also allow qualified persons, upon such reasonable belief, to notify any third party previously designated by an eligible adult to receive notification and to delay transactions for a period of up to 15 business days. The broker-dealer or investment advisor would be required to immediately, but in no event more than two business days after the requested transaction or disbursement, to provide written notification of the delay and the reason for delay to all parties authorized to transact business on the account.

LB 403 – Medicaid Estate Recovery: Senator Julie Slama (Peru) is the sponsor of legislation that would establish a five-year statute of limitations for recovery of Medicaid benefits by the Department of Health and Human Services with respect to a retained life estate by the recipient of medical assistance. The provisions of LB 403, along with a series of other bills, have been amended into LB 501, and advanced to General File by the Judiciary Committee.

PRIORITY BILL DESIGNATIONS

The following bills of interest to the banking industry have been designated as priority bills, which will enhance their likelihood of being considered as the session progresses.

SENATOR PRIORITY

LB 18 – Senator Stinner – ImagiNE Nebraska Act (NBA Position – Support)

LB 139 – Senator Slama – COVID-19 Liability Protection Act (NBA Position – Support)

LB 258 – Senator M. Hansen – The Healthy and Safe Families and Workplaces Act (NBA Position – Oppose)

LB 388 – Senator Hilgers – Nebraska Broadband Bridge Act (NBA Position – Support)

LB 408 – Senator Geist – Property Tax Request Act (NBA Position – Support)

LB 644 – Senator B. Hansen – Property Tax Request Act (NBA Position – Support)

LB 649 – Senator Flood – Nebraska Financial Innovation Act (NBA Position – Oppose)

LR11CA – Senator Erdman – Constitutional Amendment (NBA Position – Oppose)

March 12, 2021

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COMMUNITY REINVESTMENT ACT

I. INTRODUCTION

The Office of the Comptroller of the Currency (OCC) recently published:

- the list that identifies a bank's type based on asset size or business model for 2021.
- the list of the distressed and underserved areas where certain bank activities conducted in 2021 are eligible to receive Community Reinvestment Act (CRA) consideration.
- the banking industry median hourly compensation value used for determining the dollar value of community development service activities during 2021.

The OCC will publish these two lists and the median hourly compensation value annually under the June 2020 CRA rule, which applies to national banks, federal savings associations, and federal branches of foreign banking organizations that are subject to the OCC's regulations under CRA.

II. BANK TYPE DETERMINATIONS

"Bank type" (see link <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-16a.xlsx>) is the term that the OCC uses to identify banks that are small, intermediate, wholesale, and limited purpose or banks subject to general performance standards (GPS). Bank type is determined by a bank's asset size in the case of small, intermediate, and GPS banks and by business model in the case of wholesale and limited purpose banks. A bank's type generally determines the performance standards and related examination procedures used to evaluate the bank's CRA performance.

The OCC applied the asset size thresholds in the June 2020 rule to determine that:

- a bank with assets of \$600 million or less is a small bank.
- a bank with assets greater than \$600 million and equal to or less than \$2.5 billion is an intermediate bank.
- a bank with assets greater than \$2.5 billion is a GPS bank.

Bank type determinations are unchanged for banks currently designated by the OCC as wholesale or limited purpose. Additionally, banks currently operating under an OCC-approved strategic plan are categorized on the list of bank type determinations as “strategic plan.”

Bank types apply to activities conducted during the calendar year 2021.

III. DISTRESSED AND UNDERSERVED AREAS

The OCC designates distressed and underserved areas in accordance with the June 2020 rule.

A distressed area is a middle-income census tract identified by the OCC that meets one or more of the following conditions:

- An unemployment rate of at least 1.5 times the national average;
- A poverty rate of 20 percent or more; or
- A population loss of 10 percent or more between the previous and most recent decennial census or net migration loss of 5 percent or more over the five-year period preceding the most recent census.

An underserved area is a middle-income census tract identified by the OCC as

- meeting the criteria for population size, density, and dispersion that indicate the area’s population is sufficiently small, thin, and distant from a population center that the census tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The OCC uses as the basis for these designations the “urban influence codes,” numbered “7,” “10,” “11,” and “12,” maintained by the Economic Research Service of the U.S. Department of Agriculture; or
- not having a branch of any bank within
- two miles from the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;
- five miles from the center of the census tract if it is a mixed census tract, as defined by the Federal Financial Institutions Examination Council Census data;
- ten miles from the center of a census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data;
- five miles from the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; or
- not having any branch within the census tract.

The designations for 2021 (see link <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-16b.xlsx>) reflect local economic conditions, including unemployment, poverty, and population changes.

The census tract designations reflected on the “List of 2021 Distressed and Underserved Census Tracts” apply to activities conducted in calendar year 2021. The OCC will also apply a one-year lag period for census tracts that were listed in the 2020 interagency list of distressed or underserved nonmetropolitan middle-income geographies but are no longer designated as distressed or underserved in the 2021 list. Qualifying activities in census tracts on the 2020 interagency list are eligible to receive CRA credit for 12 months after publication of the list if the activities meet the criteria in 12 CFR 25.04.

IV. BANKING INDUSTRY MEDIAN HOURLY COMPENSATION VALUE

The OCC’s computation of the banking industry median hourly compensation is used to quantify the value of a bank’s community development services under the June 2020 rule. The June 2020 rule provides that the dollar value of a community development service is determined by multiplying “compensation” by the total number of hours one or more employees spent performing the service. If the community development service is a partially qualifying activity, the full dollar value of the activity calculated above is multiplied by the percentage of the activity that is qualifying.

The June 2020 rule defines compensation as the median hourly compensation value (i.e., total salaries and benefits divided by full-time equivalent employees) for the banking industry based on aggregate call report data for (1) median salaries and employee benefits from Schedule RI, Item 7.a. and (2) the median number of full-time equivalent employees from Schedule RI Memorandum Item 5.

The median hourly compensation value for the banking industry to be applied to qualifying community development activities that are effective October 1, 2020, through December 31, 2021, is \$39.03. Banks may round the median hourly compensation value to the nearest dollar.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.

March 12, 2021

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CFPB-ABILITY-TO-REPAY/QUALIFIED MORTGAGE FINAL RULES

I. INTRODUCTION

The Consumer Financial Protection Bureau (CFPB) recently issued two final rules amending the Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule). These final rules are:

- **General QM Final Rule:** The General QM Final Rule replaces the existing 43 percent debt-to-income ratio limit in the General QM definition with price-based thresholds and makes other changes to the ATR/QM Rule as discussed below.
- **Seasoned QM Final Rule:** The Seasoned QM Final Rule creates a new category of qualified mortgage, the Seasoned QM which is described in further detail below.

II. GENERAL QM FINAL RULE

A. Amended General QM Definition

The General QM Final Rule amends the General QM definition. Among other things, it replaces the existing 43 percent DTI limit with a price-based limit and removes Appendix Q as well as any requirements to use Appendix Q for General QM loans. However, the General QM Final Rule retains the ATR/QM Rule's consider and verify requirements and clarifies how they apply under the revised General QM definition. The General QM Final Rule also retains the existing product-feature and underwriting requirements and limits on points and fees.

B. Price-Based Limit

A loan meets the revised General QM definition only if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) for a comparable transaction by less than the applicable threshold set forth in the General QM Final Rule as of the date the interest rate is set. Generally, this threshold is 2.25 percentage points. However, the General QM Final Rule provides higher thresholds for loans with smaller loan amounts, for certain manufactured housing loans, and for subordinate-lien transactions. The thresholds (which will be adjusted annually for inflation) set forth in the General QM Final Rule are:

- For a first-lien covered transaction with a loan amount greater than or equal to \$110,2603, 2.25 percentage points;

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

(Manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development establishing manufactured home construction and safety standards. Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for these purposes.)

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 years as the loan's interest rate for the entire loan term when determining the APR for purposes of these thresholds.

C. Consider and Verify Requirements

The revised General QM definition retains “consider and verify” requirements. First, it requires that creditors 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 DTI ratio or residual income. Second, it requires that creditors 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. A creditor may only consider amounts that it has verified in accordance with the verification requirements.

However, the General QM Final Rule does not prescribe specifically how a creditor must consider the monthly DTI ratio or residual income, a particular monthly DTI ratio or residual income threshold, or specific methods of underwriting that a creditor must use (other than to require that verification methods and criteria must be reasonable). Furthermore, the General QM Final Rule provides flexibility for a creditor to take into account additional factors that are relevant in determining a consumer's ability to repay the loan.

To prevent uncertainty that may result from Appendix Q's removal, the General QM Final Rule clarifies the consider and verify requirements in the revised General QM definition. For example, the General QM Final Rule clarifies that to meet the requirement to consider, a 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 ability-to-repay determination;
- 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 ability-to-repay 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 ability-to-repay determination, 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 ability-to-repay determination. If a creditor does not satisfy this documentation requirement for a loan, that loan is not a General QM under the revised definition.

Additionally, the General QM Final Rule includes a list of specific verification standards that creditors may use to meet the revised General QM definition's verify requirement. If a creditor satisfies the verification standards in one or more specified manuals, the creditor has a safe harbor for compliance with the verification requirement in the revised General QM definition. 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 Final Rule 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 listed in the General QM Final Rule, provided that the two versions are substantially similar. It clarifies that a creditor need only comply with requirements in the manuals for creditors to verify income, assets, debt obligations, alimony and child support using specified reasonably reliable third-party documents or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

D. Other Provisions

The General QM Final Rule also clarifies that a creditor does not meet the verification requirements in the ATR/QM Rule's general ability-to-repay standard if the creditor observes an inflow of funds into the consumer's account without confirming that the funds are the consumer's personal income. For example, a creditor would not meet the verification requirements in the ATR/QM Rule's general ability-to-repay standard where 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.

The General QM Final Rule preserves the ATR/QM Rule's current threshold separating safe harbor from rebuttable presumption QMs. Under that threshold, a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set or by less than 3.5 percentage points for subordinate-lien transactions. However, the General QM Final Rule creates a special rule for General QM

loans for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. For such loans, the creditor must determine the APR, for purposes of this threshold, by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

E. Effective Date of the General QM Final Rule

The General QM Final Rule is effective on March 1, 2021, but has a mandatory compliance date of July 1, 2021. A creditor will have the option of complying with the revised General QM definition for covered transactions for which the creditor receives an application on or after the effective date and before July 1, 2021. The General QM Final Rule's revisions apply to covered transactions for which a creditor receives an application on or after July 1, 2021.

NOTE: The CFPB has proposed to further delay the mandatory compliance date of the General QM Final Rule from July 1, 2021 to October 1, 2021. If the delay is finalized as proposed, the old, DTI-based General QM definition; the new, priced-based General QM definition; and the GSE Patch (unless the GSE's exit conservatorship prior to October 1, 2011) would all remain available as long as the lender received the consumer's application prior to October 1, 2022.

III. SEASONED QM FINAL RULE

The Seasoned QM Final Rule creates a new category of QMs, the Seasoned QM. A residential mortgage loan is a Seasoned QM and receives a safe harbor from liability under the ATR/QM Rule if the loan satisfies certain product restrictions, does not exceed a points-and-fees limit, satisfies underwriting requirements, is held in portfolio until the end of the seasoning period (subject to certain enumerated exceptions), and meets certain performance standards at the end of the seasoning period. A loan made by any creditor, regardless of size, is eligible to become a Seasoned QM if at the end of the seasoning period it meets the requirements in the Seasoned QM Final Rule. Loans that satisfy another QM definition at consummation also can be Seasoned QM loans, as long as the requirements for Seasoned QMs are met.

A. Product Restrictions and Points-and-Fees Limit

A loan has to meet the following product restrictions to be eligible to become a Seasoned QM:

- The loan is secured by a first lien. If a loan is a subordinate-lien loan, the loan is not eligible to be a Seasoned QM.
- The loan has a fixed rate. Adjustable-rate or step-rate mortgage loans are not eligible to be Seasoned QMs.
- The loan has regular, substantially equal periodic payments that are fully amortizing, does not allow negative amortization, and does not have a balloon payment. A loan has fully amortizing payments if periodic payments of principal and interest will fully repay the loan over the loan term.
- The loan term does not exceed 30 years.
- The loan is not a high-cost mortgage as defined in Regulation Z, 12 CFR 1026.32(a).

Additionally, the total points and fees for the loan cannot exceed the limits specified in the ATR/QM Rule. Generally, this means that the total points and fees cannot exceed 3 percent of the loan amount.

These product restrictions do not prohibit a qualifying change that is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, even if the qualifying change involves, for example, a balloon payment or lengthened loan term. The Seasoned QM Final Rule sets forth conditions that must be met for a change to be a qualifying change.

B. Underwriting Requirements

For a loan to be eligible to become a Seasoned QM, the creditor must meet consider and verify requirements for the loan. The creditor must consider the consumer's DTI ratio or residual income, income and assets other than the value of the dwelling, and debts and must verify the consumer's income or assets other than the value of the dwelling and the consumer's debts, using the consider and verify requirements established for General QMs in the General QM Final Rule.

As noted in the above discussion of the General QM Final Rule, to comply with these consider requirements, a creditor is required to take into account the consumer's income, assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ability-to-repay determination. Although the requirements do not prescribe how a creditor must take these factors into account or impose a particular standard or threshold for considering DTI ratio or residual income, a creditor must maintain written policies and procedures for how it takes into account the factors and retain documentation showing how it took into account the factors for a given loan.

Creditors are also required to satisfy verification requirements. They must verify the consumer's income or assets other than the value of the dwelling and the consumer's debts using reasonably reliable third-party records in a manner consistent with the revised standards for General QMs. As discussed above, creditors will receive a safe harbor for compliance with the verification requirements if they comply with verification standards in the relevant provisions of the manuals specified in the General QM Final Rule or with certain revised versions of those manuals.

C. Portfolio Requirements

In order to be eligible to be a Seasoned QM, a loan must meet certain portfolio requirements. Generally, a loan is eligible to be a Seasoned QM only if, at consummation, the loan is not subject to a commitment to be acquired by another person, and the creditor holds the loan in portfolio until the end of the seasoning period. However, the Seasoned QM Final Rule provides exceptions to these portfolio requirements.

First, the Seasoned QM Final Rule provides some exceptions that are similar to those that apply to Small Creditor QMs under the ATR/QM Rule. For example, it allows transfers pursuant to certain supervisory sales and pursuant to certain mergers and acquisitions.

Second, the Seasoned QM Final Rule allows for a single transfer during the seasoning period if the loan is not securitized as part of the transfer or at any other time before the end of the seasoning period. This exception may only be used one time. This means that if a loan is to remain eligible to become a Seasoned QM, a purchaser that acquires the loan pursuant to this exception may not subsequently transfer it to any other entity, unless a different exception applies. Additionally, the loan may not be securitized before the end of the seasoning period.

D. Performance Requirements

In order to become a Seasoned QM, a loan must meet certain performance requirements at the end of the seasoning period. Specifically, the loan can 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.

The Seasoned QM Final Rule defines delinquency as the failure to make a periodic payment (in one full payment or in two or more partial payments) 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. The failure to pay other amounts, such as late fees, does not constitute a delinquency for purposes of the performance requirements. Additionally, if there is a qualifying change during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, the principal and interest used to determine whether a periodic payment is delinquent are the principal and interest amounts as modified by the qualifying change.

When determining whether a scheduled periodic payment is delinquent for this purpose, the due date is the date the payment is due under the terms of the legal obligation, without regard to whether the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. However, if the first payment due date in the legal obligation at consummation is modified due to reasons related to the timing of delivery, set up, or availability for occupancy of the dwelling securing the loan, the modified first payment due date shall be considered when determining if the periodic payment is delinquent.

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 periodic payments and does not make both sequential payments before the due date of the next scheduled periodic payment after the two sequential periodic payments. Thus, a monthly, bi-weekly, or quarterly periodic payment would be 30 days delinquent when the periodic payment is not paid by the due date of the following monthly, bi-weekly, or quarterly payment due date. The Seasoned QM Final Rule also provides an example of how to determine if a periodic payment is 60 days delinquent.

Funds taken from escrow and funds paid on behalf of the consumer by the creditor, servicer, or assignee of the loan (or any other person acting on their behalf) are not considered in assessing whether a periodic payment has been made or is delinquent for purposes of the Seasoned QM Final Rule's performance requirements. Creditors can, however, generally accept deficient payments, within a payment tolerance of \$50, on up to three occasions during the seasoning period without triggering a delinquency for purposes of these performance requirements. This exception to the definition of delinquency in the Seasoned QM Final Rule only applies, however, if the creditor does not treat the payment as delinquent for purposes of the mortgage servicing provisions in subpart C of Regulation X.

E. Seasoning Period

In order for a loan to be a Seasoned QM, it must meet certain requirements during or at the end of a seasoning period. Generally, the seasoning period is the 36-month period that begins

on the date on which the first periodic payment is due after consummation. 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 final 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. Additionally, the seasoning period can only resume after the temporary payment accommodation if any delinquency is cured either pursuant to the loan's original terms or through a qualifying change.

F. Safe Harbor

The Seasoned QM Final Rule provides a safe harbor for Seasoned QMs, regardless of whether the loan is a higher-priced loan.

G. Effective Date

The Seasoned QM Final Rule is effective on March 1, 2021. Its revisions to the ATR/QM Rule apply to covered transactions for which a creditor receives an application on or after the effective date.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.



NEBRASKA BANKERS ASSOCIATION
Education Center - Virtual Offering



Spring Agri-business Virtual Conference

April 6 – 7, 2021



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TUESDAY, APRIL 6, 2021

9:00 a.m. **Welcome & Opening Remarks**

9:05 a.m. **Farm Bill and Washington Update**

Delaney Howell, Former Host of Market to Market

Agriculture policy and the political climate play a huge role in our everyday lives as agriculturalists. During this interactive presentation, Delaney takes audience members through the “ins and outs” of everything from the Farm Bill to the current political climate and how those shaping our policy in Washington play an impact in our operations back home.

9:55 a.m. **Break**

10:05 a.m. **Controlling the Uncontrollables**

Paul Mussman, President, AgWest Commodities, LLC, Holdrege, NE

- ✓ Grain Market Review
- ✓ What Ifs Played Out in 2021
- ✓ Team Approach to Marketing

11:00 a.m. **Break**

11:10 a.m. **The Millennial Farmer**

Zach Johnson, Millennial Farmer (Invited)

Known to his 250,000+ followers on YouTube as the “Millennial Farmer”, Zach is a fifth-generation farmer who’s spent his life growing, working, and learning on his family’s farm. A product of the millennial generation, his appreciation of new technology blends with his old-fashioned work ethic to help ensure that the farm will continue to grow and succeed long into the future.

12:00 p.m. **Day 1 Closing Comments**

WEDNESDAY, APRIL 7, 2021

9:00 a.m. **High Impact Meteorology in Production Agriculture: Spring/Summer 2021 Outlook**

Eric R. Snodgrass, Principal Atmospheric Scientist for Nutrien Ag Solutions

Successful production agriculture has many sources of risk and changing weather conditions and forecasts drive much of our decision making. This presentation will have two primary objectives. First, history is our best teacher, so we will investigate the large-scale weather processes that have influenced yields in the US over the last 40 years.

We will learn together how to observe and forecast high-impact weather patterns that cause yields to break away from trend (i.e., floods, drought, heat waves, cool summers, etc.). We will discuss the best way to interpret weather forecasts (both short and long-term) and where to go for the best data and forecast graphics.

9:50 a.m. Break

10:00 a.m. **The U.S. and Global Cattle and Protein Market Situation! What Lies Ahead?**

Kevin Good, Vice President of Market Analysis, Cattle-Fax, Centennial, CO

Kevin will discuss the cattle and beef situation in detail and share his analysis on the record large pork and poultry production in the U.S. and why global market access and growth will be essential in the decade ahead.

10:50 a.m. Break

11:00 a.m. **Lending in the Agricultural Marketplace – 2021 and Beyond**

Dr. David M. Kohl, Professor Emeritus, Agricultural & Applied Economics Dept., Virginia Tech

The pandemic's impact and lasting effects have created economic and financial ripples that will be observed throughout the decade. Global trade, consumer behaviors, supply, and marketing chains, and other disruptors are creating challenges, while simultaneously presenting opportunities in the agricultural lending marketplace. Dr. Kohl will draw upon his decades of engagement and interaction with the agricultural industry to provide wisdom and actionable items that can be used with your agricultural customers. Topics include the high tech, high touch approach to building relationships, aligning with producer mindsets, assessing business IQ as it relates to financials and bottom-line economics, and the growth of ag businesses of the future. Get ready for an action-packed session that provides answers to some of the most asked questions in the agricultural lending marketplace.

12:00 p.m. Conference Adjournment

Registration and Pricing Information

Member: \$299 \$259 for the first registrant and \$199 for each add'l from the same bank. Non-Member: \$777 (per person)

Approximately 2 days prior to the conference, you will receive a link to the online presentation.

Notice is required for cancellation **by March 30**. Notice is required for all cancellations. If the request is received by the NBA Education Center by March 30, 2021, the full fee will be refunded.

1-01/20/2021



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Event Calendar

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