



National Banker Teleconference ATR/QM, Escrow, and LO (h) and (i) May 2, 2013

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Agenda

- Ability-to-Repay/Qualified Mortgage Rule (“ATR/QM Rule”)
- Escrows for Higher-Priced Mortgage Loans Rule (“Escrow Rule”)
- Loan Originator Compensation Rule (“LO Rule”):
 - Provisions (h) and (i) Only
 - 1) Prohibition against mandatory arbitration clauses, and
 - 2) Prohibition on financing single-premium credit insurance

Ability-to-Repay/ Qualified Mortgage Rule (ATR/QM Rule)

ATR/QM Rule

Background

- Before the crisis: ability-to-repay requirements only applied to higher-priced and high-cost loans.
- After the crisis:
 - Laws strengthened to apply to all closed-end residential mortgages.
 - Qualified mortgages entitled to presumption of compliance.

Effective date: January 10, 2014

ATR/QM Rule

Overview

- General ability-to-repay requirement
- Qualified mortgages (QMs): three types
- Special exemption from ATR rule: “non-standard” to “standard” streamlined refinancings
- New rules on prepayment penalties
- CFPB’s concurrent proposal for additional refinements to small, portfolio lender QMs and additional exemptions

ATR/QM Rule

Scope

Applies To:

- All consumer-purpose, closed-end loans secured by a dwelling.
 - Purchase-money, refinancing, home-equity loans
 - First and subordinate liens
- Referred to as “covered transactions”

ATR/QM Rule

Scope

Does not apply to:

- HELOCs;
- Timeshare plans;
- Reverse mortgages;
- Certain temporary or “bridge loans;”
- Certain construction-to-permanent loans;
- Business-purpose loans; and
- Loan modifications, except a “refinancing” under Regulation Z.

ATR/QM Rule

General ATR Requirement

General Ability-to-Repay (ATR)

A creditor must “not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.”

Regulation Z, 12 CFR 1026.43(c)(1)

ATR/QM Rule

General ATR Underwriting Factors

Creditor Generally Must Consider Eight Underwriting Factors

1. Current and reasonably expected income or assets
2. Current employment status
3. Monthly payment on mortgage
4. Monthly payment on simultaneous second (including HELOC) creditor knows or has reason to know of

ATR/QM Rule

General ATR Underwriting Factors

5. Monthly payment on mortgage-related obligations
6. Current debt obligations, alimony, and child support
7. Monthly debt-to-income or residual income
8. Credit history

ATR/QM Rule

Qualified Mortgages

Presumption of Compliance

- Qualified mortgages are entitled to a presumption that they comply with the ATR requirements.
- Three categories of QMs:
 - The Standard QM;
 - The Temporary “government patch” QM; and
 - The Balloon-payment QM

ATR/QM Rule

Qualified Mortgages

Two Types of Presumptions

- *Safe harbor*
 - It is conclusively presumed that creditor complied with ATR requirement simply because the loan meets the QM standards
- *Rebuttable presumption*
 - A rebuttable presumption means that a consumer claiming a violation could still have the opportunity to provide evidence that a creditor did not make a “reasonable and good faith determination” of the consumer’s ability to repay, but he would have the burden to prove the claim.

ATR/QM Rule

Qualified Mortgages

Rebuttable presumption = “higher-priced QMs”

- First lien: APR 1.5% or more over APOR
- Subordinate lien: APR 3.5% or more over APOR

Safe harbor = prime rate QMs

- First lien: APR less than 1.5% over APOR
- Subordinate lien: APR less than 3.5% over APOR

Proposed: Raise safe harbor threshold to 3.5% for the special balloon-payment QM that small, rural/underserved portfolio lenders can originate.

ATR/QM Rule

Standard QM

- Regular, periodic payments that are substantially equal with no negative amortization, interest-only payment, or balloon payments
- Loan term may not exceed 30 years
- Limit 3% points and fees:
 - Cap adjusted upward for smaller loans
 - Some origination costs excluded
- Underwriting must take into account the monthly payment of all mortgage-related obligations
- Income or assets relied on in making ATR determination must be considered and verified
- 43% back-end DTI

ATR/QM Rule

Standard QM

- New “Appendix Q”
 - Based on FHA single-family handbook
 - Use Appendix Q to determine “debt” and “income”
- 43% DTI and Appendix Q only required for standard QM

ATR/QM Rule

Temporary Government Patch QM

Requirements for Government Patch QM

- The 43% DTI cap **does not** apply
- Three of the standard QM requirements **do** apply:
 - Regular, periodic payments which are substantially equal, no negative amortization, interest only, or balloon payments;
 - Loan term cannot exceed 30 years; and
 - Total points and fees may not exceed 3% or other applicable cap.

And.....

ATR/QM Rule

Temporary Government Patch QM

Requirements for Government Patch QM (Continued):

- Loans must be **eligible*** to be
 - Purchased or guaranteed by a GSE while under conservatorship or receivership; or
 - Insured or guaranteed by HUD, VA, USDA, or RHS

* Only eligibility required -- no requirement that the loan actually be purchased, guaranteed, or insured.

ATR/QM Rule

Temporary Government Patch QM

Sunset on Temporary QM:

GSE – eligible loans. Expires earlier of:

- when conservatorship or receivership ends, or
- January 10, 2021 (7 years after rule's effective date)

Government agency insured or guaranteed loans. Expires earlier of:

- when those agencies establish their own QM rules, or
- January 10, 2021

ATR/QM Rule

Balloon-payment QM

Balloon mortgages do not meet the requirements for the standard QM. However, certain balloon-payment mortgages may qualify as balloon-payment QMs.

Eligible creditor:

- During previous calendar year, extended more than 50% of its first-lien, covered transactions on properties located in counties designated “rural” or “underserved;”
- Creditor and its affiliates must have originated 500 or fewer first-lien covered transactions during previous calendar year; and
- Creditor must have less than \$2 billion in assets at end of previous calendar year.

ATR/QM Rule

Balloon-payment QM

- **“Rural” and “underserved” counties** – CFPB will publish a list annually. Creditors may rely on this list as a safe harbor for these designations.
- **“Rural”** = not located in a metropolitan statistical area or a micropolitan statistical area next to a metro area;
- **“Underserved”** = HMDA data for that year shows 2 or less creditors making 5 or more first-lien covered transactions in that county.

ATR/QM Rule

Balloon-payment QM

Loan Requirements:

- Scheduled payments must be substantially equal and calculated on maximum 30-year amortization period;
- Fixed rate loan, with term of at least 5 years;
- Debt-to-income ratios or residual income must be considered and verified;
 - No 43% DTI requirement; no requirement to use Appendix Q;
 - Need not consider the balloon payment itself when determining the amount of mortgage-related payments to consider in assessing the ability to repay the loan
- No negative amortization or interest-only loans;
- Loan term must not exceed 30 years
- Points and fees are less than 3% or other applicable cap.

ATR/QM Rule

Balloon-payment QM

Loan Requirements (continued)

- Must be a portfolio loan –
 - Loan must not be subject to forward commitment, and cannot be sold within 3 years or loses QM status.
 - **Exceptions:** sell to another qualifying creditor, sales to comply with legal requirements, and changes in ownership of creditor.

CFPB Proposed Amendment

- Raise the “safe harbor” threshold for all balloon-payment QMs to 3.5% above APOR.

ATR/QM RULE

Points and Fees

Cap adjusted for smaller loan amounts - five tiers

<u>Loan amount</u>	<u>Cap</u>
\$100,000 and up	3% of “total loan amount”
\$60,000 up to \$100K	\$3,000
\$20,000 up to \$60K	5%
\$12,500 up to \$20K	\$1,000
Under \$12,500	8%

ATR/QM RULE

Points and Fees

Definition and Calculation:

- Most prepaid finance charges (subject to special rules);
 - Limited number of discount points can be excluded, providing certain criteria met;
 - Government guaranty fees and monthly private mortgage insurance excluded;
 - Qualifying upfront private mortgage insurance can be excluded on certain conditions.
- Loan originator compensation;
- Settlement charges paid to creditor or affiliate, or “unreasonable;”
- Credit-related insurance premiums;
- Maximum prepayment penalty that could be charged under terms of loan; and
- Prepayment penalty actually charged to borrower if borrower refinances loan with current holder, servicer acting for current holder, or affiliate of either.

ATR/QM Rule

Streamlined Refinancing

Refinance a “non-standard” loan into a “standard loan”

- Non-standard
 - An ARM with an introductory fixed rate lasting one year or more,
 - An interest-only loan, or
 - A negative amortization loan;
- Standard loan
 - Regular, periodic payments; no interest-only, balloons or negative amortization
 - Points and fees cannot exceed 3% or other applicable cap
 - Maximum term 40 years
 - Fixed interest rate for first 5 years, and
 - Proceeds only to pay off non-standard loan and closing costs.

ATR/QM Rule

Streamlined Refinancing

Streamlined Refinance Exception:

- Creditor of the standard loan must be holder of non-standard loan, or servicer acting on behalf of the holder;
- Payments on standard loan must be “materially lower,” with what is effectively a safe harbor at 10% reduction;
- Application for refinance received no later than 2 months after non-standard loan recast;
- Consumer’s payment history
 - Maximum one 30-day late in preceding 12 months
 - No 30-day late in preceding 6 months,
- Non-standard loans closed January 10, 2014, or later must either meet ATR requirements or be a standard or government patch QM.

ATR/QM Rule

Prepayment Penalties

Prepayment penalties only permitted in covered transactions if the loan is:

- A prime, fixed-rate loan, and
- Prepayment penalties are otherwise permitted by law.

When permitted, the prepayment penalty is limited to:

- The first 36 months of the loan, and
- Maximum of 2% of outstanding balance in first 2 years, and 1% in third year.

ATR/QM Rule

Concurrent Proposal

CFPB's concurrent proposal to amend ATR/QM Rule would

- include additional exemptions from ATR requirement for:
 - certain types of community lending programs; and
 - some federal stabilization and foreclosure prevention programs, and federal streamlined refinance programs.
- create a fourth category of QM: small, portfolio lender.
- raise the “safe harbor” QM threshold to 3.5% for balloon-payment QM and the proposed new small, portfolio lender QM.
- add guidance regarding accounting for loan originator compensation in points and fees calculation.

ATR/QM Rule

Hyperlink Resources

[Federal Register – Final Rule](#)

[CFPB’s Small Entity Compliance Guide – ATR/QM](#)

***Escrows for
Higher-Priced Mortgage Loans
(HPMLs)***

Escrows for HPMLs

Background

- Statutory and regulatory requirements relating to the establishment and maintenance of escrow accounts have been expanded.
- An exemption from these requirements has been established for smaller creditors that operate in predominately rural or underserved areas.

Effective Date: June 1, 2013

Escrows for HPMLs

Account Duration

- Extended from one year to five years
- Primary change to the escrow requirements

Escrows for HPMLs

Cancellation of Escrow Account

A creditor or servicer may cancel the escrow account:

- Upon satisfaction of the underlying debt; or
- In response to a consumer's request, but not earlier than 5 years after the loan's consummation date

A creditor or servicer may not cancel an escrow account upon a consumer's request unless:

- The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and
- The consumer currently is not delinquent or in default on the underlying debt obligation

Escrows for HPMLs

Evasion

Creditor cannot structure a home-secured loan as an open-end plan to evade the escrow account requirements

Escrows for HPMLs

Exemptions

Overview of Exemptions

- Continues current rule's exemptions
- Extends current rule's insurance premium exemption for loans secured by condominium units to similar communities, and
- Creates a new exemption for smaller creditors that operate predominantly in rural or underserved areas.

Escrows for HPMLs

Exemptions

Continued -Escrow Rule Exemptions

- Loans Secured by Shares in a Cooperative
- Construction Loans
- Bridge Loans, and
- Reverse Mortgages

(HELOCs, even if first lien, are not subject to the HPML Escrow Rule)

Escrows for HPMLs

Exemptions – Insurance Premium

Insurance Premium Exemption

- For a transaction secured by a condominium unit, Regulation Z includes an exemption from reserving for insurance premiums in an escrow account if the association is obligated to maintain a master insurance policy.
- The final HPML Escrow Rule expands this exemption to transactions secured by dwellings in planned unit developments and similar common interest communities.
 - This partial exemption is available if dwelling owners are required to participate in a governing association, where the association has an obligation to the owners to maintain a master policy insuring all dwellings.

Escrows for HPMLs

Exemption – Smaller Creditors

Creditors Operating Predominantly in Rural or Underserved Areas May Qualify for Exemption If Four Conditions Are Met:

1. During preceding calendar year creditor must have extended more than 50% of its total first-lien covered transactions on properties located in either “rural” or “underserved” counties;
2. Creditor and its affiliates must have originated 500 or fewer first-lien covered transactions during the preceding calendar year;
3. Creditor must have had total assets of less than \$2 billion at end of the preceding calendar year; and
4. Creditor or its affiliate must not maintain an escrow account for mortgage loans that creditor or its affiliate currently services other than:
 - a) Escrow accounts established on or after April 1, 2010, when the existing regulation became effective, and before June 1, 2013, the effective date of the final rule;;or
 - b) Escrow accounts established after consummation as an accommodation to distressed consumers to assist consumers in avoiding default or foreclosure.

Escrows for HPMLs

Exemption – Smaller Creditors

Defining Rural or Underserved Counties

- A county is “rural” during a calendar year if it meets certain parameters of the Office of Management and Budget and the Department of Agriculture.
- A county is “underserved” during a calendar year if, according to HMDA data for that year, no more than two creditors extend first-lien “covered transactions” five or more times in that county.
- The final rule creates a safe harbor for creditors who rely on a pre-established list of rural or underserved counties published by the CFPB.

Escrows for HPMLs

Forward Commitments

Forward Commitments With Respect To Rural or Underserved Areas

- Some creditors transfer or sell higher-priced mortgage loans to purchasers pursuant to agreements that have been entered into at or prior to consummation, which are sometimes known as forward commitments.
- If the purchaser does not qualify for the exemption for smaller creditors operating predominantly in rural or underserved areas, the selling creditor must establish an escrow account for these mortgage loans.
- In these situations, the selling creditor could still meet the eligibility criteria for the exemption (i.e., the requirement that neither it or its affiliate maintain an escrow account for mortgage loans that it or its affiliate services) with respect to other transactions if the selling creditor does not “maintain” escrow accounts for these forward committed loans (i.e., does not service these forward committed mortgage loans with an escrow account through the due date of the second periodic payment).

Escrows for HPMLs

Hyperlink Resources

[Federal Register – Final Rule](#)

[CFPB’s Small Entity Compliance Guide - Escrows](#)

[CFPB’s Preliminary List of Rural and Underserved Counties](#)

Loan Originator Compensation Rule Provisions (h) & (i)

Loan Originator Rule

Sections (h) & (i) Only

Effective Date: June 1, 2013

- Prohibition Against Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights, 1026.36(h) and
- Prohibition Against Financing Single-Premium Credit Insurance, 1026.36(i)

Loan Originator Rule

Sections (h) & (i)

Scope

Provisions (h) and (i) apply to:

- Closed-end transactions secured by a dwelling, and
- HELOCs when secured by the consumer's *principal* dwelling

Provisions (h) and (i) do not apply to:

- Loans secured by a consumer's interest in a timeshare plan

Loan Originator Rule

Section (h)(1)

Arbitration

- Mandatory arbitration clauses or other non-judicial procedures prohibited in consumer credit contracts
 - Closed-end mortgages secured by the consumer's dwelling, and
 - HELOCs secured by the consumer's *principal* dwelling
- Prohibition applies to entire transaction
- Consumer and creditor may agree to use arbitration or other non-judicial procedures after dispute arises

Loan Originator Rule

Section (h)(2)

Waivers of Federal Statutory Causes of Action

- Waivers of Federal statutory causes of action in mortgage contracts is prohibited
 - Closed-end mortgages secured by the consumer's dwelling, and
 - HELOCs secured by the consumer's *principal* dwelling
- Consumer and creditor may agree, after dispute arises, to use arbitration or other non-judicial procedure

Loan Originator Rule

Section (i)

Single-Premium Credit Insurance

- Financing, directly or indirectly, premiums or fees for credit insurance in connection with a consumer credit transaction is prohibited
 - Closed-end mortgages secured by the consumer's dwelling, and
 - HELOCs secured by the consumer's *principal* dwelling
- Prohibition does not apply to premiums or fees paid for on a monthly basis

Loan Originator Rule

Section (i)

Credit Insurance Means:

“Credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but...”

Loan Originator Rule

Section (i)

Credit Unemployment Insurance Excluded When:

- The insurance premiums are “reasonable”
- The creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums and
- The insurance premiums are:
 - paid pursuant to a separate insurance contract, and
 - not paid to an affiliate of creditor

Loan Originator Rule

Section (i)

Mortgage Insurance Not Covered

The prohibition against the financing of single-premium credit insurance does not apply to mortgage Insurance

Loan Originator Rule

Hyperlink Resources

[Federal Register – Final Rule](#)

Closing

This concludes our formal presentations on:

- ***The Ability-To-Repay/Qualified Mortgage Rule,***
- ***The Escrow Requirements for Higher-Priced Mortgages Rule, and***
- ***Loan Originator Compensation Rule - Provisions (h) & (i)***

Questions and Answers

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Thank You

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