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CFPB Publishes Small Entity Guide for QM and ATR

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April 10, 2013 the Consumer Financial Protection Bureau (CFPB) published a Small Entity Compliance Guide for the Ability-to-Repay and Qualified Mortgage Rule. The CFPB's goal is to provide a comprehensive rule summary in a plain language and FAQ format. This guide will be followed by a series of additional guides for each of the new mortgage rules. Please refer to my article published on February 22, *"CFPB Announces Implementation Plans for New Mortgage Rules"*
http://cdn.s3.webcontentor.com/OFFICE/BANKER01/files/misc_files/130225040819_2.22.13.CFPB.Anna.pdf

Please refer to my article published April 10th regarding the CFPB guide for consumers entitled "*What the Ability-to-Repay Rule Means for Consumers.*"
http://cdn.s3.webcontentor.com/OFFICE/BANKER01/files/misc_files/130411025513_4.10.13.CFPB.Anna.pdf

Ability-to-Repay and Qualified Mortgage Rule - Small Entity Compliance Guide
Published April 10, 2013 by the Consumer Financial Protection Bureau

Summarized below is the information provided in the Introduction section of the Guide.

In 2008 the Board of Governors of the Federal Reserve System adopted a rule under the Truth in Lending Act prohibiting creditors from making higher-priced mortgage loans without assessing consumers' ability to repay the loans. Creditors have had to follow these requirements since October 2009.

In the 2010 Dodd-Frank Act, Congress adopted similar (but not identical) Ability-to-Repay (ATR) requirements for virtually all closed-end residential mortgage loans. Congress also established a presumption of compliance with the ATR requirements for a certain category of mortgages, called Qualified Mortgages (QMs).

In 2013, the CFPB adopted a rule that implements the ATR/QM provisions of the Dodd-Frank Act. The ATR/QM rule is the subject of this guide. This rule generally applies to closed-end consumer credit transactions that are secured by a dwelling for which the creditor receives an application on or after January 10, 2014.

In the CFPB's guide, ATR rule describes the minimum standards creditors must use to determine that consumers have the ability to repay the mortgages they are extended. While the ATR rule provides eight specific factors creditors must consider (including verifications of income or assets relied on, employment if relied on, and review of credit history), the rule does not dictate that creditors follow particular underwriting models.

The rule also contains special requirements for creditors that are refinancing their own customers into more affordable loans to help those customers avoid payment shock.

In addition to the general ATR requirements, the rule also defines the requirements for Qualified Mortgages and how QM status works if there is a question about whether a creditor has assessed the borrower's ATR.

The rule provides a safe harbor for QMs that are not higher-priced. Loans that are higher-priced and meet the definition of a Qualified Mortgage have a different protection, that of a rebuttable presumption that the creditor complied with the ATR requirements.

The CFPB guide explains the requirements for creditors to follow to determine whether the loans organizations originate to meet the QM requirements and, if so, whether they will receive either a safe harbor or rebuttable presumption of compliance with the ATR requirements.

The guide also discusses the grounds for rebutting the presumption for higher-priced QMs - principally, that the consumer's income, debt obligations, and payments on the loan and any simultaneous loans - did not leave the consumer with sufficient residual income/assets left to live on.

Qualified Mortgages have three types of requirements: restrictions on loan features, points and fees, and underwriting. One of the underwriting requirements under the general definition for Qualified Mortgages is that the borrower's total debt-to-income ratio is not higher than 43 percent.

For a temporary, transitional period, certain loans that are eligible for sale or guarantee by a government-sponsored enterprise (GSE) - such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) - or are eligible under specified feeral agencies' guarantee or insurance programs will be considered Qualified Mortgages under a temporary definition. The loans must meet certain QM restrictions on loan features and points and fees, but they are not subject to a flat 43 percent DTI threshold.

In response to the special concerns of small rural creditors and to preserve access to mortgages in rural and underserved areas, there are also special provisions for rural balloon-payment Qualified Mortgages held in portfolio by small creditors operating in rural or underserved areas.

Finally, the rule bans most prepayment penalties, except on certain non-higher-priced Qualified Mortgages with either fixed or step rates. Prepayment penalties are allowed on these non-higherpriced loans only if the penalties satisfy certain restrictions and are permitted under law and if the creditor has offered the consumer an alternative loan without such penalties.

The Bureau has issued a proposal to exempt certain transactions from the ATR rule, to create a fourth Qualified Mortgage category for certain loans made and held in portfolio by small creditors including community banks and credit unions, and to provide additional guidance on certain issues relating to the points-and-fees calculations for Qualified Mortgages.

Summarized below are the primary key topics and related information that the CFPB has provided in its Small Entity Compliance Guide:

Overview of the Ability-to-Repay/Qualified Mortgage Rule
What is the ATR/QM rule about?
When do I have to start following this rule?
What transactions are covered by the ATR/QM rule?
How long do I have to keep records on compliance with the ATR/QM rule?

About Ability to Repay
What is the general ATR standard?
What are the eight ATR underwriting factors I must consider and verify under the rule?
How do I verify information I considered using reliable third-party records?
What is a reasonably reliable third-party record?
How do I determine ATR?
Do loans originated under the general ATR standard have to comply with a debt-to-income (DTI) threshold?
What do I include on the income side of the debt-to-income ratio when determining ATR?
How do I calculate, consider, and confirm income, assets, employment, and credit history?
What do I include on the debt side of the debt-to-income ratio when determining ATR?
How do I calculate, consider, and confirm debt information?
Does the ATR rule ban certain loan features or transaction types?
What happens if a consumer has trouble repaying a loan I originate under the general ATR rule? What happens if my organization violates the regulation?

About Qualified Mortgages
What is a Qualified Mortgage?
What is the difference between safe harbor and rebuttable presumption in terms of liability protection?
What makes a QM loan higher-priced?
Are there different types of QMs?
Are there special requirements for calculating the DTI ratio on QM loans?
What are the QM points-and-fees caps and what do I include when calculating points and fees?
Can I charge prepayment fees on a covered transaction?

Refinancing from Non-Standard to Standard Loans: ATR Special Circumstance
Do the standard ATR requirements apply when I refinance consumers from a non-standard to a standard loan?
How do I calculate non-standard and standard payment amounts to determine whether the consumer's monthly payment on the standard mortgage will represent a material decrease?

Please note: The CFPB provides the following statement on the cover of the Guide.

"Please refer to our concurrent proposal about the changes we have proposed to amend the final rule issued January 10, 2013, which is set to take effect on January 10, 2014. The Bureau is considering comments received and plans to finalize the proposal as soon as possible."

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