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CREDIT COUNSELING

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NFCC Quick guide to Qualified Mortgage rules

As you may know, the Consumer Financial Protection Bureau's ("CFPB's") Qualified Mortgage ("QM") and Ability to Repay ("ATR") rules go into effect in early 2014. These rules, created pursuant to requirements in the Dodd-Frank Act, are intended to ensure that new home loans are safe and affordable, and that lenders will enjoy certain protections from liability if they follow these rules.

While many of the rules are oriented to the mortgage origination and servicing processes, it is important for NFCC Certified Housing Counselors to understand the requirements of these rules so that they can adequately prepare their clients for the new mortgage origination process, and so that counselors can help ensure that mortgage originators and servicers are adhering to these new rules. Counselors should also be aware that these rules create a new "High Cost Loan" standard, and that all consumers who receive a high cost mortgage must first obtain a certificate of counseling from a HUD-approved housing counseling agency.

The CFPB has created a number of compliance guides to help explain the requirements of these new rules. This guide will not attempt to comprehensively explain the details of each of these rules, but is intended instead to serve as a quick reference for NFCC Certified Housing Counselors and to direct counselors to the appropriate CFPB guides for further reference. It is the responsibility of each NFCC member agency to determine how best to adhere to these new rules. All of CFPB's compliance guides can be found here: <http://www.consumerfinance.gov/mortgage-rules-at-a-glance/>

The Ability to Repay and Qualified Mortgage rules:

I. The Ability to Repay ("ATR") rule:

The Ability to Repay Rule requires that mortgage originators make a reasonable, good faith effort to determine a borrower's ability to repay their mortgage loan. While the rule does not require that lenders follow specific underwriting standards, it does list 8 factors for lenders to consider when evaluating a borrower's ATR. Those 8 factors are: the borrower's current or reasonably expected income or assets; the borrower's employment status; the estimated monthly mortgage payment; any monthly payments on other mortgages secured by the same property; monthly property taxes, insurance or other fees such as Home Owner's Association fees; the borrower's debts, alimony, or child support obligations; the borrower's monthly Debt-To-Income ratio (no specific DTI ratio is proscribed by the rule), and the level of residual income; and the borrower's credit history. The ATR rule permits each

lender to follow its own policies and standards for applying these factors in order to determine a customer's ATR.

For more information on the ATR rule, consult the link below.

II. The Qualified Mortgage ("QM") rule:

The QM rule creates 4 categories of Qualified Mortgages that afford certain protections to lenders in the event that a borrower defaults and challenges the loan in court. In order for any given mortgage to qualify for QM status: the loan may not contain risky features or practices such as negative amortization or interest-only periods; the loan term must not be longer than 30 years; and the total points and fees on the loan must not exceed 3% of the loan principal. There are four types of QM loans, explained in further detail below: General QM Loans, Temporary QM loans, Small Creditor QM loans, and Balloon Payment QM loans.

Depending on whether a loan is considered "higher-priced" (Note: do not confuse this "higher-priced" threshold with the "High Cost Loans" rule detailed in a separate section below), the QM will either qualify for a "safe harbor" or "rebuttable presumption" of compliance with the ATR requirements described above. The protections that various QM loans may qualify for are important when a defaulted borrower challenges the lender in court. If a QM loan is not considered "higher-priced," then it has a "safe harbor," and a court will conclusively presume that the lender complied with ATR standards. A consumer cannot argue that the loan did not meet the ATR requirements; instead the only avenue for the consumer to challenge the loan would be to argue that the loan in fact did not qualify as a QM (see details on QM loans below). QMs that are "higher-priced" have a "rebuttable presumption" of compliance with the ATR rule, meaning that the consumer has the burden of providing evidence that demonstrates that the lender did not comply with the ATR rule at the time of origination.

For all General and Temporary QM loans, a first-lien loan is considered "higher-priced" if the APR of the loan equals the Average Prime Offer Rate ("APOR") plus 1.5%. Subordinate lien QM loans are considered "higher-priced" if they are greater than APOR plus 3.5%. Additionally, for all General QM loans: must fully amortize within 30 years of origination at the maximum APR applied within the first 5 years of the loan; the lender must have considered and verified the borrower's income, assets, debts, alimony, and child support; and the borrower's total monthly DTI ratio must be less than or equal to 43%. Temporary QM loans must meet the same requirements and must also be eligible for purchase, guaranty, or insurance from a Government Sponsored Entity, the Federal Housing Authority, the Veterans Administration, the United States Department of Agriculture, or the Rural Housing Service.

Small Creditor QM loans and Balloon Payment QM loans are considered "higher priced" if the first lien APR equals APOR + 3.5%, and face additional requirements spelled out in the guide below. Balloon Payment QM loans must meet similar standards as General QM loans, except that the Balloon payment is not considered as a part of the amortization period.

More details on the ATR and QM rules are available here:

<http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/>

CFPB Counseling Requirement for “High Cost” loans:

The CFPB has also amended the Home Ownership and Equity Protection Act Rule to require that borrowers who obtain “high cost” mortgages receive homeownership counseling before the loan is finalized. In order to determine whether a particular loan is considered “high cost,” you must evaluate either the APR of the loan, the amount of points and fees paid in connection with the loan transaction, or the existence and nature of the prepayment penalties associated with the loan. Please consult the rule and compliance guide for more information on when the counseling should occur. Importantly, the counselor must verify that the borrower has received all of the high cost mortgage disclosures that the lender is required to give the borrower prior to the loan closing. In addition to the three factors described above, the Rule requires that all first-time homebuyers receiving a negative amortization loan must first receive counseling.

The lender must receive a certificate stating that the borrower has received homeownership counseling from a HUD-approved counselor prior to closing a high cost loan. The lender may pay for the cost of counseling, but cannot condition the payment of the counseling fee on the consumer obtaining the loan. Consumers may also pay the counseling fee themselves, or it can be financed in to the cost of the loan.

More information on determining whether a particular loan is considered a High Cost loan, the required High-Cost Loan disclosure, and on the High Cost Loan counseling requirement is available here:

<http://www.consumerfinance.gov/regulations/high-cost-mortgage-and-homeownership-counseling-amendments-to-regulation-z-and-homeownership-counseling-amendments-to-regulation-x/>; and here: http://files.consumerfinance.gov/f/201301_cfpb_high-cost-mortgage-rule_what-it-means-for-consumers.pdf.

The CFPB’s counselor locating tool is available here: <http://www.consumerfinance.gov/find-a-housing-counselor/>

CFPB Mortgage Servicing Rules:

CFPB has released a guide for Housing Counselors which highlights the critical points for counselors to engage with servicers and the borrower client during the various stages of delinquency and default.

That guide is available here: http://files.consumerfinance.gov/f/201312_cfpb_mortgages_help-for-struggling-borrowers.pdf

FHA QM Rule:

The Department of Housing and Urban Development recently released its Qualified Mortgage rule, which covers mortgages that are insured or guaranteed by the Federal Housing Authority. HUD’s rule closely mirrors CFPB’s QM rule, and exact detail on the rule are available here:

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-11/pdf/2013-29482.pdf>