

Mortgage Lending Compliance Issues – Session 2

Ability to Repay & Originator Compensation



Today's Topics

- This session will define what the “Ability to Repay” means from a lender’s perspective and what procedures and documentation practices satisfy the rule
- We will also outline the types of loans that are subject to the ATR rules
- Originator compensation will focus on compensation practices, such as bonus or production incentives, that might run afoul of the new rule



CFPB January Rulemaking

- In January 2013, the Consumer Financial Protection Bureau (CFPB) issued 8 distinct final rules that apply to consumer mortgage transactions
- The rules amend several existing regulations, including Regulations Z, X and B. Most are effective in January of 2014 though the escrow rule went into effect in June 2013.



CFPB January Rulemaking

- The rules implement the:
 1. High-Cost Mortgage and Homeownership Counseling Amendments to TILA
 2. Homeownership Counseling Amendments to RESPA
 3. Escrow Requirements under TILA
 4. Ability to Repay and Qualified Mortgage Standards under TILA



CFPB January Rulemaking

- 5. **Mortgage Servicing Provisions under RESPA & TILA**
- 6. **Appraisal Requirements for Higher-Priced Mortgage Loans under TILA**
- 7. **Appraisal Requirements under ECOA**
- 8. **Loan Originator Compensation Requirements under TILA**



CFPB January Rulemaking

- **The scope of each of the rules varies considerably. For example, some rules apply to only closed end credit transactions.**
- **Others apply to both closed end and open end transactions**
- **Some apply only to transactions secured by the consumer's principal residence, while others apply to any consumer dwelling**
- **Moreover, some apply only to dwellings secured by real property, while others also apply to personal property used as a dwelling**



CFPB January Rulemaking

- **Since the release of the initial Final Rules in January, the CFPB has issued additional clarifications and supplemental guidance**
- **Several rule amendments have been issued between May 16, 2013 and September 13, 2013**
- **These amendments have made additional changes to ECOA, RESPA and TILA and are primarily set to go into effect in January 2014**

Mortgage Lending Compliance Issues:

Ability to Repay Rule Background





ATR Rule Background

- The final ATR Rule continues a process that began with a May 2011 proposal from the Federal Reserve Board
- It is effective for applications received on or after January 10, 2014. Along with the ATR Rule, the CFPB drafted and simultaneously issued proposed exemptions for certain types of lenders and transactions.
- The final exemptions were published by the CFPB in the Federal Register on 6/12/13.



ATR Rule Background

- Under the general ATR rule, a creditor may not make a covered loan unless it 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.”




ATR Rule Background

- The ATR Rule applies to ‘consumer purpose’ credit transactions secured by a dwelling. The dwelling need not be a principal dwelling or real property.
- Purchase transactions and refinancing are covered and lien priority is irrelevant



ATR Rule Background

- The Rule does not cover:
 - Home equity lines of credit (HELOCs) or other open-end credit;
 - Mortgages secured by an interest in a timeshare plan;
 - Reverse mortgages;
 - Temporary or “bridge” loans with terms of 12 months or less
 - A construction phase of 12 months or less of a construction-to-permanent loan;
 - Business purpose loans, even if secured by a dwelling; or
 - Loan modifications, except in the rare case that a modification constitutes a “refinancing” under Reg Z





ATR Compliance Options

- Creditors can comply in one of four ways:
 1. Follow the Rule's general ability to repay standards in § 43(c) - the 'General ATR Option'
 2. Make a qualified mortgage (QM) under § 43(e) - the 'QM Option'
 3. Refinance a non-standard mortgage into a standard mortgage in compliance with § 43(d)
 4. For very small creditors that service primarily rural or underserved areas, by making a qualifying balloon mortgage in a rural or underserved area under § 43(f)

Mortgage Lending Compliance Issues:


General ATR Option






#1 – General ATR Option

- The General ATR Option requires a creditor to:
 - (i) consider in its underwriting decision a number of specified financial items and
 - (ii) verify by prescribed means the items it relies on in making a credit decision
- Unlike the QM Option, there are no requirements relating to product features and no limitations on points and fees that may be charged




#1 – General ATR Option

- The General ATR Option requires a creditor to consider 8 factors in making the repayment ability determination:
 - Factor #1 - Current or reasonably expected income or assets (other than the value of the collateral)
 - The creditor may consider assets alone, and “need consider only the income or assets necessary to support a determination that the consumer can repay the covered transaction.”
 - For example, if a consumer earns an annual salary from both a full-time job and a part-time job and the creditor reasonably determines that the consumer's income from the full-time job is sufficient to repay the loan, the creditor need not consider the part-time job income”




#1 – General ATR Option

- **Factor #2 - If the creditor relies on income from the consumer's employment, then the consumer's current employment status must be evaluated**
- **Factor #3 - The monthly payment on the loan**
- For standard fixed and adjustable-rate mortgages (ARMs), the payments to be considered for underwriting purposes must be monthly, substantially equal and sufficient to fully amortize the loan over its term. ARMs must reflect use of the "fully indexed rate" or any introductory rate (whichever is greater).




#1 – General ATR Option

- **Factor #4 - The monthly payment on any "simultaneous loan" that the creditor "knows or has reason to know" will be made**
- "Simultaneous loan" means any loan covered by the Rule or any HELOC that will be secured by the same property and is made at, before or — if it will cover closing costs of the transaction — after consummation of the transaction
- The creditor is not obligated to investigate beyond what its reasonable underwriting policies and procedures would call for in determining whether the consumer has applied for other credit
- If the simultaneous loan is also subject to the Rule, then the creditor must determine the payments on it using the same principles that apply to the primary loan



#1 – General ATR Option

- **Factor #5 - Monthly payment for "mortgage-related obligations"**
- The creditor must also take into account "mortgage-related obligations" on the first and any simultaneous loans. Mortgage-related obligations are property taxes, insurance premiums, HOA fees, assessments etc.
- **Factor #6 - Current debt obligations, alimony and child support**
- Creditors have significant flexibility to consider current debt obligations in light of attendant facts and circumstances, including that an obligation is likely to be paid off soon after consummation



#1 – General ATR Option

- **Factor #7 - Monthly debt-to-income ratio (DTI) or residual income**
- Residual income is the amount of monthly income that would remain after subtracting the consumer's monthly debt obligations. The DTI ratio and residual income are calculated using the income and expense items from the other factors
- This provision "does not prescribe a specific monthly DTI with which creditors must comply"; It does not require consideration of DTI (as opposed to residual income) at all. "Instead, an appropriate threshold for a consumer's monthly [DTI] ratio or monthly residual income is for the creditor to reasonably determine.



#1 – General ATR Option

- **Factor #8 - Credit history**
- This requirement to consider “credit history” does not mandate that creditors “obtain or consider a consolidated credit score.” Moreover, in cases where a consumer has obtained few or no extensions of traditional credit, a creditor may “look to nontraditional credit references, such as rental payment history or utility payments.”
- The requirement to consider credit history 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.”
- Instead, a creditor “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.”



#1 – General ATR Option

- In addition to compliant underwriting guidelines, a creditor using the General ATR Option must verify the information on which it bases its repayment ability determination by using reasonably reliable, written “third party records”
- “Third party records” primarily refer to documents or other records prepared or reviewed by an appropriate person other than the consumer, the creditor, or other transaction party
- Employment status may be verified orally if the creditor makes a written record of the conversation



#1 – General ATR Option

- The rule provides detailed instructions for the verification of income, employment, and debts
- **Stated-income or similar no-doc loans are not permitted under the rule**
- In addition, the rule provides comprehensive guidance on how loan payments are to be evaluated (i.e., for ARMs, interest-only, negatively amortizing, and balloon loans) and how DTI calculations must be performed

Mortgage Lending Compliance Issues:

Qualified Mortgage Option





#2 – Qualified Mortgage Option

- With the Qualified Mortgage Option, creditors that originate bona fide QMs are deemed to have automatically complied with the Ability to Repay Rule's intent
- To be a QM, a loan must satisfy three types of threshold requirement tests:
 - a product features test;
 - one of two, alternative underwriting tests;
 - and a points-and-fees limitation test



QM Features Test: Loan Terms

- QM Product Features Test:
 - The loan term must not exceed 30 years
 - The amortization term must provide for regular periodic payments that are substantially equal (except for the effects of interest rate changes on adjustable rate mortgages etc.)
 - Repayment terms must not result in the increase of the principal balance (negative amortization), deferral of principal repayment, or a balloon payment.



QM Features Test: 43% DTI

- The 43% DTI alternative prescribes underwriting guidelines that are structurally similar to those under the General ATR Option, but are much more detailed and specific
- In particular, the 43% DTI alternative mandates that the creditor comply with Regulation Z's new Appendix Q, which contains over 35 pages of rules regarding what and how to consider income and liability items, as well as how such items must be verified



QM Features Test: 43% DTI

- In general they require items to be considered and verified for the two prior years, and further require the gathering of information sufficient to make projections for the following three years.
- Much of Appendix Q's language comes from the manual underwriting guidelines of the FHA's Single Family Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance



QM Features Test: 43% DTI

- The QM's 43% DTI underwriting treatment and calculations methodology is similar to the ATR General Option in many ways
- However, the Appendix Q requirements do have some minor calculation & treatment differences
- One major difference is that borrower credit history must be considered under the General Option but not under the QM Option



QM Features Test: GSE/Federal Agency

- Under the "GSE/Federal Agency" underwriting alternative, a loan passes the QM underwriting test if at consummation it is eligible:
- To be purchased or guaranteed by Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA);



QM Features Test: GSE/Federal Agency

- To be insured by the U.S. Department of Housing and Urban Development (HUD) under the National Housing Act;
- To be guaranteed by the U.S. Department of Veterans Affairs (VA);
- To be guaranteed by the U.S. Department of Agriculture pursuant to its Single Family Housing Guaranteed Loan Program; or
- To be insured by the Rural Housing Service (RHS)



QM Features Test: GSE/Federal Agency

- To pass this underwriting test, a loan need not actually be purchased or guaranteed by a GSE or insured or guaranteed by one of the federal agencies; rather, the Rule "requires only that the loan be eligible (i.e., meet the criteria) for such purchase, guarantee, or insurance."
- To determine eligibility, a creditor may rely on an underwriting recommendation provided by a GSE Automated Underwriting System (AUS) or written guide in effect at the time.



QM Features Test: GSE/Federal Agency

- The availability of this alternative is time limited. The option will not be available if that GSE (or any regulatory entity succeeding it) has ceased operating under the conservatorship or receivership of FHFA
- The option of using eligibility under a federal agency's program will also expire on the effective date of any rule issued by the agency pursuant to its authority under Dodd-Frank to define a QM that it will insure or guarantee
- And, under a sunset provision, the entire GSE/Federal Agency alternative will not be available for loans originated after January 10, 2021, (seven years after the Rule's effective date)



QM Features Test: Points & Fees Caps

- QM Points & Fees Limitations Test
- The Rule provides that to be a QM under either the 43% DTI or the GSE/Federal Agency underwriting alternative, the "points and fees payable in connection with the loan" cannot exceed specified amounts or percentages of the "total loan amount."
- The caps depend on the loan amount. For loan amounts greater than or equal to \$100,000, the cap on points and fees is 3% of the total loan amount.



QM Features Test: Points & Fees Caps

- For loan amounts below \$100,000, the caps are:
- \$60,000 - \$99,999: \$3,000
- \$20,000 - \$59,999: 5% of the total loan amount
- \$12,500 - \$19,999: \$1,000 cap; and
- \$12,499 and below: 8% of the total loan amount
- All dollar amounts associated with the points and fees limitation — i.e., loan amount, total loan amount, and dollar caps — will be indexed for inflation



QM Features Test: Points & Fees Caps

- Points and fees includes all non-interest components of the finance charge. They are included in the calculations if they are known at or before consummation.
- In general, a charge is "known" in this sense 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"
- Thus, a charge to the customer that is known by consummation is includable in "points and fees" "even if the consumer finances it and repays it over the loan term"
- The Rule contains very specific directions about whether particular charges are in or out of the definition



QM Points & Fees: What's Included?

- Some real estate related fees must be included in Points & Fees calculations if:
 - The charge is paid to an affiliate of the creditor;
 - The creditor receives direct or indirect compensation in connection with the charge; or
 - The charge is unreasonable



QM Points & Fees: What's Included?

- Covered real estate related fees could include:
 - Fees for title examination, abstract of title, title insurance, property survey, and similar purposes;
 - Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents;
 - Notary and credit-report fees;



QM Points & Fees: What's Included?

- Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations; and
- Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge



QM Points & Fees: What's Included?

- "Points and fees" also includes the following three related types of charges, but only where they are "payable at or before consummation":
 - Any credit life, credit disability, credit unemployment, or credit property insurance
 - Any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, and
 - Any payments directly or indirectly for any debt cancellation or suspension agreement or contract
- The commentary clarifies that so long as these charges are "payable at or before consummation," it does not matter whether they are paid in cash or, if permitted by applicable law, financed.



QM Points & Fees: What's Included?

- Certain prepayment penalties also are counted toward the 3% cap. Specifically, both of the following are included in "points and fees":
- The maximum "prepayment penalty" that may be charged or collected under the terms of the mortgage loan; and
- The total "prepayment penalty" that would be incurred by the consumer if the consumer were to refinance the existing mortgage loan with any of the following: (a) the current holder of the existing loan, (b) a servicer acting on behalf of the current holder, or (c) an affiliate of either



QM Points & Fees: What's Not Included?

- The Rule specifically defines the following five calculation exceptions:
 1. Government Mortgage Insurance or Guarantee Fees - "Points and fees" does not include government mortgage insurance or guarantee fees, i.e., FHA mortgage insurance premiums or guarantee fees for VA or RHS loans. This rule applies whether the fees are payable before, at, or after consummation. Thus, both up-front fees and post-consummation periodic payments are excluded.
 2. All PMI Fees Payable After Closing - "Points and fees" also does not include private mortgage insurance ("PMI") premiums or other charges that are "payable after consummation." This applies "even if the amounts of such premiums and charges are known at or before consummation."




QM Points & Fees: What's Not Included?

3. At Least a Portion of Certain Up-front PMI Fees - At least a portion of PMI premiums or charges "payable at or before consummation" — so-called "up-front" premiums — are excluded from "points and fees" where the premium is refundable on a pro rata basis and the refund is automatically issued upon notification that the loan is paid in full.
 - If that "refundability" condition is satisfied, then a creditor may exclude from "points and fees" the portion of the up-front premium that does not exceed the amount that the borrower would pay for FHA insurance on the transaction.



QM Points & Fees: What's Not Included?


4. Unretained Third Party Charges Not Expressly Included as Points and Fees by Other Provisions of the Rule – With some exceptions, the Rule excludes from "points and fees" "any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either,"



**QM Points & Fees:
What's Not Included?**


5. **Certain "Bona Fide Discount Points" on Lower Interest Loans** - The final exception to the general principle that non-interest finance charges are "points and fees" concerns "bona fide discount points."

- A "bona fide discount point" is "an amount equal to 1 percent of the loan amount paid by the consumer that reduces the interest rate ... based on a calculation that is consistent with established industry practices." The Rule provides detailed guidance on how a creditor can show that its calculation satisfies this standard.



**QM Points & Fees:
What's Not Included?**

- The Rule excludes varying amounts of "bona fide discount points" depending on how close the undiscounted interest rate is on the date the rate is set to the "APOR", a term borrowed from the Bureau's "higher-priced mortgage loan" regulation.
- Effectively, this provision discourages creditors from offering less creditworthy borrowers the option of paying discount points




**QM Points & Fees:
What's Not Included?**

- This exclusion specifically allows creditors to exclude:
- Up to two bona fide discount points if the pre-discounted interest rate does not exceed the Average Prime Offer Rate (APOR) by more than one percentage point; and
- Up to one bona fide discount point if the pre-discounted rate does not exceed the APOR by more than two percentage points

Mortgage Lending Compliance Issues:

Refinance of Non-Standard Mortgage Option





#3 – Refinance of a Non-Standard Mtge. Option

- The Rule provides creditors with an exemption when a customer’s “non-standard mortgage” is refinanced to a “standard mortgage.”
- A “non-standard mortgage” is defined as
- (1) an ARM with an introductory fixed rate for a period of 1 year or longer,
- (2) an interest-only loan or
- (3) a negative amortization loan.



#3 – Refinance of a Non-Standard Mtge. Option

- A balloon-payment loan is not a non-standard mortgage
- A “standard mortgage” must provide for regular payments and cannot have negative amortization, interest-only or balloon-payment features
- A standard mortgage must also satisfy the following criteria:



#3 – Refinance of a Non-Standard Mtge. Option

- The interest rate is fixed for at least the first 5 years after consummation;
- The total points and fees payable in connection with the loan complies with the 3% (or otherwise applicable) cap for qualified mortgages;
- The loan term does not exceed 40 years; and
- The proceeds of the loan will only be used to pay the outstanding balance of the non-standard mortgage and closing and settlement fees for the standard mortgage



#3 – Refinance of a Non-Standard Mtge. Option

- A creditor must consider whether the consumer is likely to default on the existing non-standard mortgage when the loan is recast and whether a standard mortgage would likely prevent the consumer’s default
- Provided that the creditor has made these preliminary determinations, refinances from a non-standard mortgage to a standard mortgage will be exempt from the ability to repay requirements if:



#3 – Refinance of a Non-Standard Mtge. Option

- (1) the creditor for the standard mortgage is the current holder of the existing non-standard mortgage;
- (2) the monthly payment for the standard mortgage is “materially lower” than the payment on the non-standard mortgage;
- (3) the creditor receives the consumer’s written application for the standard mortgage no later than two months after the non-standard mortgage has recast; and
- (4) the consumer has made no more than one payment 30 days late on the non-standard mortgage in the 12 months preceding the application, and no late payments in the previous 6 months.

Mortgage Lending Compliance Issues:

Small Creditors Option



#4 – Small Creditors in Rural or Underserved Areas Option

- The Rule conveys QM status on certain balloon-payment loans originated by small creditors that operate in predominantly rural or underserved areas, as designated by the Bureau.
- “Small creditors” here means those that have less than \$2 billion in assets and (together with their affiliates) originate no more than 500 first-lien loans within the scope of the Rule per year.



#4 – Small Creditors in Rural or Underserved Areas Option

- A balloon payment QM must satisfy the QM product features requirements except for the prohibitions on balloon payments and deferment of principal.
- Thus, a balloon payment QM still cannot result in negative amortization, have a loan term that exceeds 30 years, or have “points and fees” that exceed the 3% (or other applicable) cap. Further, balloon payment QMs must satisfy the following criteria:



#4 – Small Creditors in Rural or Underserved Areas Option

- The creditor must determine at or before closing that the consumer can pay the monthly mortgage payments and mortgage-related obligations (excluding the balloon payment) from the consumer's current or reasonably expected income or assets;
- The creditor must consider and verify the consumer's DTI ratio or residual income in support of its repayment ability determination;
- The scheduled payments on the loan must be substantially equal and calculated using an amortization schedule that does not exceed 30 years;



#4 – Small Creditors in Rural or Underserved Areas Option

- The interest rate must not increase; and
- The loan must have a term of 5 years or more
- Generally, a creditor must hold a balloon-payment QM in its portfolio in order for the loan to maintain QM status
- But the Rule carves out certain instances where a balloon payment could be sold, assigned or transferred to another person without losing the loan's QM status

Mortgage Lending Compliance Issues:

Other ATR Provisions



Other ATR Provisions – Prepayment Penalties

- There are also statutory limitations on when prepayment penalties may be charged
- Prepayment penalties of any kind are prohibited unless the loan is a QM, the APR cannot increase after consummation, and the APR is not more than 1.5% over the APOR at the time the interest rate is set on a comparable transaction."
- Where prepayment penalties are allowed, there are limitations on the amount and duration of the penalty. Section 43(g)(2) contains the following limitations:
- A prepayment penalty cannot apply after the first 3 years following consummation;



Other ATR Provisions – Prepayment Penalties

- If the prepayment penalty is incurred during the first 2 years following consummation, the amount of the penalty cannot exceed 2% of the outstanding loan balance that is prepaid; and
- If the prepayment penalty is incurred during the third year following consummation, the amount of the penalty cannot exceed 1% of the outstanding loan balance that is prepaid.
- A creditor that offers a loan with a prepayment penalty is required to provide a consumer with an alternative loan option that, among other requirements, does not contain a prepayment penalty and has an APR “that cannot increase after consummation.”



Other ATR Provisions – Prepayment Penalties

- Creditors that offer loans with prepayment penalties through a mortgage broker must present the broker with an Alternative Loan and enter into an agreement that would require the broker to provide the consumer with either
 - (i) an Alternative Loan by the creditor or
 - (ii) an Alternative Loan by a second creditor, if the Alternative Loan offered by the second creditor has a lower interest rate or lower total dollar amount of origination points and fees



Other ATR Provisions – Recordkeeping

- The Rule requires creditors to retain records that show compliance with it for three years after consummation
- While the Bureau mandates a three-year retention period with respect to the Rule, it believes that “responsible creditors will likely elect to retain records of compliance well beyond three years,” due to the absence of any statute of limitations on a borrower’s ability to seek recoupment or set-off in foreclosure for a Rule violation



General vs. QM Risk Exposure

- With the General ATR Option provision, the ultimate determination of whether the creditor’s decision was ‘reasonable and in good faith’ will be highly individualized and specific to the particular transaction at issue.
- Both the creditor’s underwriting standards, the other considerations “must be viewed in the context of all facts and circumstances relevant to a particular extension of credit,” including how the underwriting standards “were applied to those facts and circumstances.”
- QM originations offer creditors the ability to protect themselves against certain types of negligence claims through either an outright presumption of compliance or a rebuttable presumption

CFPB Recent & Upcoming Rulemaking Activities Webinar

Ability to Repay May 2013 Amendments



ATR May 2013 Agency & Nonprofit Exemptions

- The amendments exempt extensions of credit made under a program administered by a Housing Finance Agency (“HFA”)
- HFAs may partner with creditors, such as local banks that extend credit in accordance with the HFA’s program guidelines. Thus, for-profit creditors that participate in HFA programs benefit from this exemption



ATR May 2013 Agency & Nonprofit Exemptions

- The amendments also entirely exempt from the Rule extensions of credit made by four types of nonprofit creditors. Specifically, creditors designated as a:
 - Community Development Financial Institution (CDFI)
 - Downpayment Assistance Through Secondary Financing Provider (DAP)
 - Community Housing Development Organization (CHDO)
 - Creditor designated as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code



ATR May 2013 Agency & Nonprofit Exemptions

- Exempt creditors must satisfy certain requirements to be eligible for the exemption.
- Specifically, in the preceding calendar year, a creditor cannot have extended credit secured by a dwelling more than 200 times
- Credit must be extended only to consumers whose incomes do not exceed the qualifying limit for moderate-income families, as specified by HUD.
- These creditors are still required to determine, in accordance with written procedures, that the consumer has a reasonable ability to repay the loan



ATR May 2013 Agency & Nonprofit Exemptions

- Extensions of credit that are made under an Emergency Economic Stabilization Act (“EESA”) program, such as loans extended under a state Hardest Hit Fund (“HHF”) program are also exempt
- The Bureau expressed a concern that “requiring credit extended pursuant to these programs to comply with the ability-to-repay provisions may unnecessarily interfere with these programs’ unique underwriting requirements



Small Creditor Portfolio Loans Exemption

- The amendments define a new but narrow category of QMs: loans that are made and held in portfolio for at least 3 years by certain small creditors. To qualify for the exemption, the creditor:
 - Must have had total assets of \$2 billion or less as of the end of the preceding calendar year; and
 - Together with its affiliates, may not have originated more than 500 first-lien loans covered by the Rule in the prior calendar year



Small Creditor Portfolio Loans Exemption

- Under this provision, small creditors do not need to follow Appendix Q or the 43% DTI limit in underwriting the loan, so long as they satisfied the other QM requirements
- Further, the Bureau has increased from 1.5% to 3.5% the amount by which the APR of these loans could exceed the APOR and still benefit from the QM safe harbor



Small Creditor Portfolio Loans Exemption

- The Bureau amendments also allow small creditors operating in rural or underserved areas to make balloon-payment QMs
- Small creditors may originate a first-lien, balloon-payment QM with an APR up to 3.5% above the APOR and still benefit from the QM safe harbor



Small Creditor Portfolio Loans Exemption

- The loan must be held in portfolio by these small creditors in order to maintain its QM status
- A loan could lose its QM status if it is sold, assigned or otherwise transferred to another entity unless it meets the circumstances under which a loan may retain QM treatment upon a transfer

CFPB Recent & Upcoming Rulemaking Activities Webinar

Originator Compensation



Loan Originator Comp Considerations

- Loan originator compensation may need to be included in the QM Points & Fees test
- All compensation paid directly or indirectly by a consumer or creditor to a loan originator that can be attributed to that transaction at the time the interest rate is set is included in the calculation amount. ”
- “Compensation” includes the dollar value of monetary and non-monetary rewards, such as “a bonus, commission, or award of merchandise, services, trips, or similar prizes.”
- It is not dependent on what it is called, but rather includes whatever the loan originator retains



Loan Originator Comp Considerations

- Any compensation structure that involves transaction-level compensation such as commissions or volume-related bonuses must be factored into the Points & Fees test
- The September 2013 ATR amendments clarified and resolved potential double-counting of compensation such as when a broker & lender are involved in the same transaction
- The amendments also changed the effective date of MLO compensation calculation compliance to 1/1/14
- Nonprofits that enjoy ‘bona fide nonprofit’ exemptions from the SAFE Act may also jeopardize their exemption by paying commissions or volume-related bonus pay

**Mortgage Lending Compliance Issues –
Session 2**

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Originator Compensation**

