

Client Alert

June 2013

CFPB Amends “Ability-to-Repay/Qualified Mortgage” Rules

As anticipated, on May 29, 2013, the Consumer Financial Protection Bureau delivered the final version of amendments to its January 2013 Ability-to-Repay/Qualified Mortgage rules (the bureau released an early draft of the amendments when the original rule was published). For more information about the Ability-to-Pay/Qualified Mortgage rules, see our prior alerts.¹ The rules, as well as the amendments, take effect on January 10, 2014.

The final amendments, which create exemptions from some provisions of the original rules for small, non-profit, and community lenders, and refine the method of calculation for loan originator compensation, contain changes from the earlier draft. The evolution of these rules clearly demonstrates the bureau’s sensitivity to criticism that they limited access to credit and in some instances double-counted loan originator compensation, a component of the important overall points and fees computation. The most significant provisions of the amendments are described below.

Loan Originator Compensation

The Dodd-Frank Act specifies that points and fees for a “Qualified Mortgage” may not exceed 3% of the total loan balance, that points and fees exceeding 5% of home loans are deemed “high-cost” mortgages entitled to additional protections and requirements under the Home Ownership and Equity Protection Act, and that all loan originator compensation, whether paid directly or indirectly by consumers *or creditors*, must be included when calculating total points and fees.

A literal reading of the law’s express requirement that compensation paid both by creditors and by consumers be included in the calculation of total points and fees can lead to double-counting as payments pass from one party to another over the course of a mortgage transaction. To avoid such duplication, the amendments exclude from points and fees:

- Loan originator compensation paid by consumers to mortgage brokers when such payments have already been counted toward the points and fees threshold as part of finance charges;
- Compensation paid by mortgage brokers to their employees (such compensation is already included in points and fees as loan originator compensation paid by consumers or creditors to the mortgage brokers); and
- Compensation paid by creditors to their loan officers.

The amendments do not alter what the bureau terms its “additive” approach to calculating compensation (i.e., adding originator compensation to other points and fees).

¹ [Consumer Financial Protection Bureau Releases Final “Ability-to-Repay/Qualified Mortgage” Rules and The Essentials: The CFPB’s Final “Ability-to-Repay/Qualified Mortgage” Rules](#)

Small Creditor Exemptions

“Small creditors” are defined as lenders (including their affiliates) having no more than \$2 billion in assets and originating no more than 500 first lien mortgages per year. Small creditor status is not dependent on whether lenders operate in predominantly rural or underserved areas, as had been previously contemplated. The amendments:

- Allow loans originated by small creditors to be considered Qualified Mortgages if they are held by the lenders for at least three years, regardless of whether the borrowers meet the 43% debt-to-income ratio required by the original rules. Such loans are still subject to the general requirements regarding points, fees, and prohibited loan features, and small creditors must still evaluate borrowers’ debt-to-income ratios;
- Provide for a two year transition period during which balloon-payment loans originated and held in the portfolios of small creditors may be designated Qualified Mortgages (under the original rules, balloon-payment loans cannot be Qualified Mortgages). During this two year period, the bureau will continue to study the issue; and
- Allow small creditors to take advantage of the safe harbor protections (for the Ability-to-Repay requirements) for first-lien Qualified Mortgages with higher annual percentage rates than otherwise permitted by the original rules. For small creditors, the APR must not exceed the average prime offer rate by 3.5%, as opposed to 1.5% for other lenders.

Non-profit Creditor Exemptions

The amendments create exemptions from the original Ability-to-Repay rules for:

- Non-profit and community based lenders that lend only to low- and moderate-income consumers;
- 501(c)(3) organizations that make no more than 200 loans per year and adopt and follow their own written procedures to ensure borrowers’ ability to repay; and
- Loans made by community development creditors, housing finance agencies, or private creditors pursuant to housing finance agency programs.

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