Ability to Repay and Qualified Mortgage Rules

John Zasada

CliftonLarsonAllen

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- Top 10 accounting firm
- Serve over 1,100 financial institutions in the country
- 200 professionals, including 25 partners, who focus exclusively on financial institutions
- We concentrate on community banks, credit unions, and thrifts

Introducing John Zasada

John Zasada is a principal with the CliftonLarsonAllen LLP (CliftonLarsonAllen) Financial Institutions Group specializing in all aspects of bank compliance. John has over 17 years experience assisting banks nationwide in complying with consumer protection regulations including establishing regulatory compliance programs, conducting compliance assessments, training staff on bank regulations, performing website compliance assessments, and BSA/AML/OFAC independent testing. Prior to joining CliftonLarsonAllen, John was employed by a large audit firm as Managing Director.

John is a frequent speaker on regulatory compliance trends, BSA/AML, compliance management, advertising compliance and website compliance. John has also been the lead instructor for the National bank Administration (NCUA) Regulatory Compliance School and trained over 300 examiners on regulatory compliance.

John attended Utica College of Syracuse University, University of Colorado at Boulder, University of Copenhagen, Denmark, and Vermont Law School.

Objectives:

At the end of this session, you will be able to:

- Understand which loans are subject to new rules, underwriting standards and underwriting model expectations, and qualified mortgages
- Take action steps to comply with the new rules

Dodd Frank

- Good for community banks according to Warren
- Thousands of pages of new regulations
- Hundreds of pages at once
- Mortgage lending first

Changes

- Early 2013
- 3,000+ pages
- Regs worse than Act
- Jobs
- CFPB focus

Compliance Changes Dates

- Remittance Transfers
- TILA/RESPA Mortgage Disclosure Integration
- Reg Z – Requirements for Escrow Accounts
- Reg Z - Mortgage Originator Standards
- Reg Z – Ability to Repay
- Reg Z and Reg X - Mortgage Servicing
- Reg Z - HOEPA – High Cost Mortgage Loans
- Reg B - Appraisal Rules
- Reg Z - High Risk Mortgage Appraisal Rules

Top Compliance Violations

- Regulation Z
- RESPA
- TIS
- HMDA
- Flood

Information Overload

- Summaries
- Updated commentary
- Checklists
- Videos
- Regulatory implementation page

Example of Compliance Headache

- Prohibition on financing credit life insurance
- Original compliance date of June 1
- Early May proposal to push back date
- Another proposal coming to clarify the requirements

Grand Plan

- Plenty of resources
- Some say the CFPB has a bigger plan than just mortgage changes
- Mortgage implementation team

Ability-to-Repay Final Rule

- Issued January 2013
- Compliance required by January 10, 2014
- CFPB and the housing collapse
- Not verifying debt and income
- No-doc, low-doc
- Analyzing payments based on teaser rate

Coverage

- HELOCs, reverse mortgages, and construction loans are exempt …
- But not from everything

Snapshot

- Fairly straightforward on the surface
- Evaluate creditworthiness based on set criteria
- Qualified mortgage
- Safe harbor or rebuttable presumption

Calculations

- Extensive information
- Calculating underwriting information including points and fees
- Appendix Q
- Debt to income ratio

Underwriting Standards

Obtain and Verify:

(1) Income or assets

(2) Employment status

(3) Monthly payment for the loan

(4) Monthly payment on any simultaneous loan

(5) Monthly payment for mortgage-related obligations

(6) Current debt obligations, alimony, and child support

(7) Monthly debt-to-income ratio or residual income

(8) Credit history

Verification

- Cannot rely on customer verbal statements
- Must use 3rd parties
- A lot of flexibility
- Records retention

Underwriting Model

- No prescribed underwriting model
- Must consider the eight factors but no set conclusions based on the factors
- The rule does provide examples
- Cannot base income on teaser rates

Riskier Loan Refinance Exemption

- ARMs, interest-only, negative amortization
- Do not have to follow entire underwriting process
- Modifications are ok
- New loan must meet certain criteria, including set rate for first 5 years and points and fee test met

Determining Affordability

- Detailed instructions
- Documentation
- Affordability standards
- Best evidence of affordability is a good payment history

Member Payment Troubles

- Member cannot pay loan
- Did you violate the rule?
- Judged based on information available when loan made
- Liability up to 3 years finance charges and fees
- SOL 3 years

General Qualified Mortgages

- Qualified mortgages have a "presumption" of compliance
- No risky loan features
- "No-doc" loans prohibited
- Points and fees less than 3% of the total loan amount
- Monthly payments based on highest payment
- Debt-to-income ratios 43 percent or less

Temporary Category

- Some lenders will be hesitant
- More flexible underwriting criteria
- Loan eligible to be guaranteed, purchased or insured by
  - Fannie/Freddie
  - HUD, VA, Ag, or Rural Housing Service.
- Phased out within 7 years

Rural Balloon-Payment Qualified Mortgages

- Small lenders in rural areas
- Treat as qualified mortgages
- 5 year term or more, fixed rate, set underwriting standards
- Hold loan in portfolio for 3 years
- May 29 final rule adds two year transition period for non rural or underserved area lenders

New 4th type of Qualified Mortgages

- Create new category of qualified mortgages for small lenders not in rural or underserved areas making non-balloon payment loans
- Less than $2b in assets, fund less than 500 a year, hold for at least 3 years
- If approved also effective January 10, 2014

Points and Fees Cap

- Higher for smaller loans
- 3% of loans equal to or greater than $100,000
- $3,000 for loans $60k - $100k
- 5% for loans $20k-$60k
- 8% for loans less than $12.5k
- Points and fees calculation

3% barrier

- Smaller loans impacted by 3%
- Decision to make non QMs
- Opportunity for smaller institutions
- Prepare to defend underwriting
- Potential market for non QMs?

Presumptions of Compliance

- Intent is to prevent unnecessary litigation
- Higher-priced vs. not higher-priced
- Higher-priced – rebuttable presumption
- Not higher-priced – safe harbor
- Higher threshold for QMs by small creditors

Presumption of Compliance

- Higher-priced loans
- Insufficient residual income
- Period of time making payments relevant

Safe Harbor

- Not higher-priced loan has safe harbor as qualified mortgage
- Lower risk
- Conclusive presumption
- QM definition

4 Ways to Qualified Mortgage

- General rule - DTI ratio not greater than 43%, no risk loan factors, term not more than 30 years, etc.
- Temporary category – DTI greater than 43% but eligible for purchase/insure/guaranteed by federal government
- Rural balloon payment home loans
- Small lenders not in rural or underserved areas making non-balloon payment loans

Miscellaneous Requirements

- Prepayment penalties generally prohibited
- Evidence of compliance for 3 years
- Structure as open-end loan to evade requirements prohibited

Liability

- Strict liability
- Action up to 3 years
- Foreclosure

Implementation Considerations

- Much different than traditional compliance
- Disclosures and timing irrelevant
- Compliance officers making product decisions
- Only QMs?
- Proof of compliance

Action Steps from CFPB

- Identify products, departments, staff
- Identify changes to make
- Indentify 3rd parties
- Training
- Other changes…

Compliance Guide

- Issued April 10
- 45 pages better than 804
- Implementation process
- Q and A
- Citations

Readiness Guide

- 22 pages
- Rule summaries, questionnaires, FAQs, tools
- Use as a road map
- Starting point only

Thank you

John Zasada
john.zasada@CLAconnect.com
218-790-1086