Ability to Repay and Qualified Mortgage Rules

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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

Compliance Changes

- 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

More Information

- Summaries
- Updated commentary
- Checklists

Example of Compliance Headache

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

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 member 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

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

Presumptions of Compliance

- Intent is to prevent unnecessary litigation
- Prime vs. subprime
- Subprime – rebuttable presumption
- Prime – Conclusive presumption

Presumption of Compliance

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

Safe Harbor

- Prime – safe harbor as qualified mortgage
- Lower risk
- Conclusive presumption
- QM definition

3 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

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

Ability-to-Repay Proposal

- More exemptions from rule
- Create new category of qualified mortgages for small lenders not in rural 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

Another Proposal

- Debt to income ratio
- Temporary QM provisions
- Small servicer exemption

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

Thank You

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