

Mortgage Bankers and Brokers Association of New Hampshire

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- Seven weeks ago, an unprecedented seven rules became effective
- Now the focus is on addressing overarching issues and rule specific clarifications
- At the same time, more rules are on the horizon, notably including:
 - RESPA-TILA Integration
 - HMDA
 - QRM
 - And more

- **ATR/QM Final Rule** - Issued January 10, 2013, implementation date January 10, 2014.
- **HOEPA Rule**— Issued January 10, 2013, implementation date January 10, 2014.
- **Loan Originator Rule** – Issued January 20, 2013, implementation date January 1, 2014.
- **Servicing Rule** – Issued January 17, 2013, implementation date January 10, 2014.
- **Escrow Final Rule** – Issued January 10, 2013, implementation date June, 1 2013.
- **ECOA Appraisal Disclosure Rule** – Issued January 18, 2013, implementation date on January 18, 2014
- **Appraisals for Higher Priced Mortgages** – Issued January 15, 2013, implementation date January 18, 2014
 - **And HUD Disparate Impact Rule** – implemented March 2013

- **RESPA TILA Final Rule** - November 20, 2013, Effective Aug 1, 2015
- **Final FHA QM Rule** – December, 2013
- **HMDA Proposed Rule**– Pre-Rule Announced, February, 2014
- **VA QM Rule** – Spring 2014
- **Final QRM Rule** – Spring 2014?
- **Additional Clarifications for Comment** – Spring or Summer, 2014?
- **CFPB - Eighteen Laws to Regulate**
- **And Examination and Enforcement**

- **ABILITY TO REPAY REQUIREMENT** – Prohibits creditor from making covered mortgage loan unless creditor makes **reasonable and good faith determination**, based on verified and documented information, that consumer will have reasonable **ability to repay** the loan according to its terms.

MEETING REQUIREMENT - Creditor can comply in any of five ways:

1. **General Ability to Repay - Originating mortgage loan after considering and verifying eight specific factors at minimum**
2. **Originating “Qualified Mortgage” (QM) (General/Garden Variety or Temporary)**
3. **Originating Smaller Creditor Rural Balloon-Payment QM**
4. **Originating Smaller Creditor Portfolio QM**
5. **Refinancing a “Non-standard Mortgage” into a “Standard Mortgage”**

Originating mortgage loan after considering and verifying eight factors at a minimum:

Current or reasonably expected income or assets, other than value of dwelling

Current employment status, if creditor relies on employment income;

Monthly payment on the covered transaction;

Monthly payment on any simultaneous loan creditor knows or should have known about

Monthly payment for mortgage-related obligations;

Current debt obligations, alimony, and child support

Monthly debt-to-income ratio or residual income

Credit history

Categories of Qualified Mortgages

"General" QM Requirements

- Borrower has a total or "back-end" debt-to-income (DTI) ratio that is less than or equal to 43%
- Points and fees do not exceed 3% of total loan amount
- No negative amortization, interest-only payments, balloon payments, or term longer than 30 years
- Underwritten:
 - taking into account monthly payment for mortgage related obligations using maximum interest rate that may apply during first five years and periodic payments of principal and interest based on such rate
 - Consideration and verification of: (a) consumer's current or reasonably expected income or assets and (b) current debt obligations, alimony, and child support.

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Categories of Qualified Mortgages

"Temporary" QM Requirements

- Mortgage must:
- Be eligible for purchase, insurance or guarantee by the GSE or government agency
- Not have points and fees exceeding 3% of total loan amount
- Not include negative amortization, interest-only payments, balloon payments, or a term longer than 30 years
- Temporary “patch” expires on effective date of QM rule issued by agencies, end of conservatorship or January 10, 2021

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Dodd-Frank establishes severe remedies for violations

Specifically, under Dodd-Frank, mortgage creditor who fails to comply with requirements for, as example, \$200,000 loan may be liable to consumer for:

- Actual damages, including for example, the borrower's down payment of 10 percent or more (i.e., \$20,000 or more);
- Statutory damages of up to \$4,000;
- All fees and up to three years of finance charges paid by the consumer which on an average loan of \$200,000 at 4.5% may be approximately \$25,000; and
- Court costs and reasonable attorney's fees associated with action
- *Plus attorneys fees for lender no matter whether claim is valid may be \$15,000-\$155,000 dollars*

Presumption of Compliance Important to Manage Risk - Strength of QM Presumption Turns on APR/APOR Difference

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Qualified Mortgages and Compliance

- Qualified mortgage is presumed to comply with Ability to Repay Requirements
- Strength of presumption depends on difference or spread between mortgage's Annual Percentage Rate (APR) and the Average Prime Offer Rate (APOR) for such loans
- Basically, rule gives safe harbor to prime mortgages and rebuttable presumption to higher priced subprime mortgage – Note: **no special threshold for jumbo mortgages**

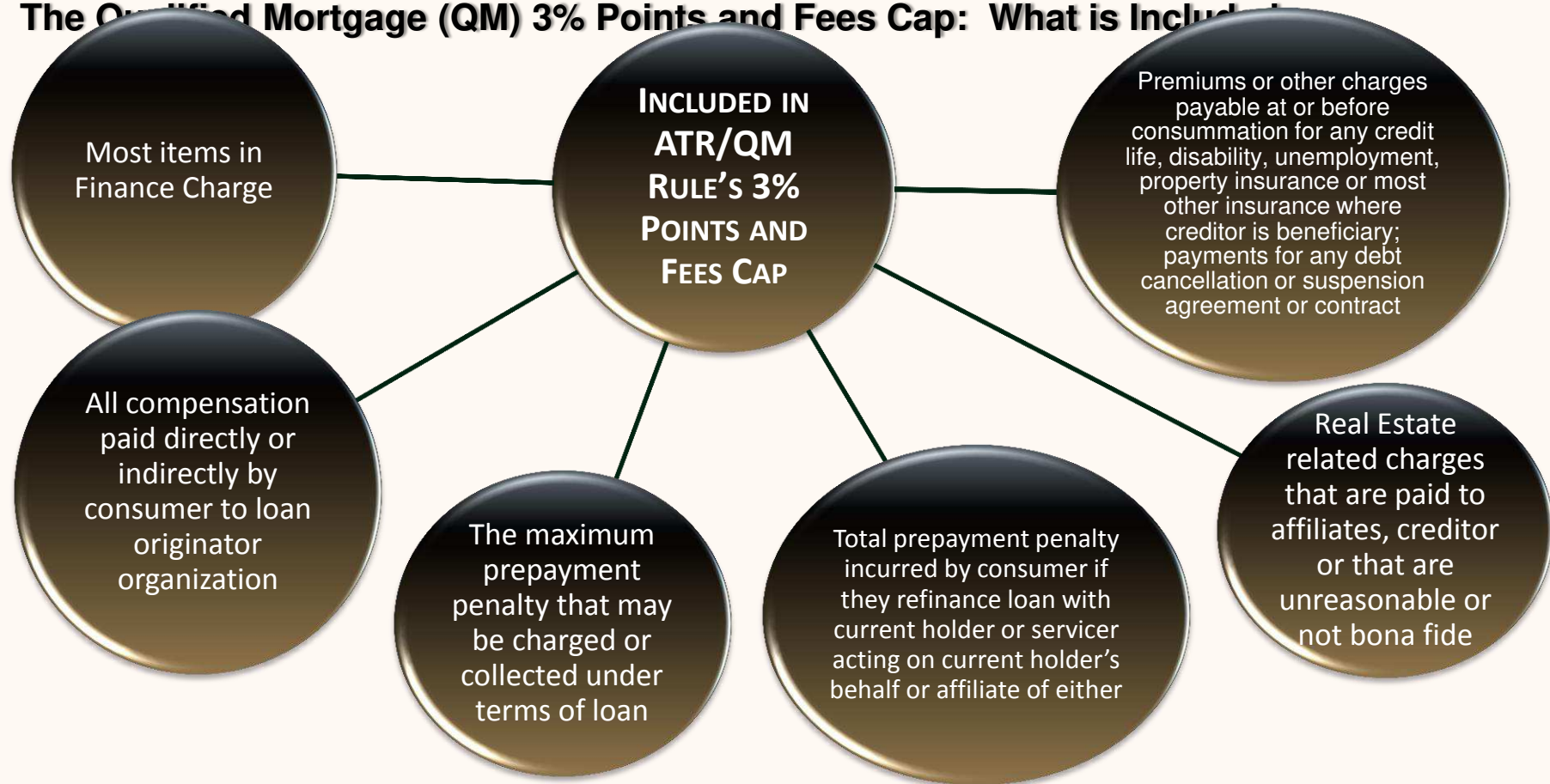
Safe Harbor

- Has Annual Percentage Rate (APR) that does not exceed Average Prime Offer Rate (APOR) by 1.5 or more percentage points for first lien or 3.5 percentage points for subordinate lien transaction.
- **Conclusive Presumption of Compliance or Safe Harbor** – Rule provides conclusive presumption or “legal safe harbor” that ability to repay requirements have been met for QM that satisfies other requirements
- **Higher 3.5 threshold for smaller creditor QMs.**

Rebuttable Presumption

- **Presumption of Compliance** - Provides “rebuttable presumption of compliance” for loans that meet qualified mortgage requirements listed above for loans that exceed APOR by 1.5 or more percentage points for first lien or 3.5 percentage points for subordinate lien transaction along with bases for rebutting presumption.
- > 3.5 for smaller creditor QMs

The Qualified Mortgage (QM) 3% Points and Fees Cap: What is Included



Points and Fees may not exceed 3% for loans above \$100K, subject to greater limitations for loans below \$100K



- **Concerns about how well the new rules are serving borrowers particularly moderate-income families**
 - **All creditworthy borrowers simply cannot obtain prime QM loans**
- **Concerns about market distortions and competition persist**

1. Increased points and fees threshold for “smaller loans” under ATR/QM rule so loans under \$200,000 are subject to more realistic limits that increase on sliding scale loan amount decreases

- First-time and moderate-income borrowers seek smaller balance loans.
- 3% points and fees cap makes smaller loans uneconomical to make or, if costs built into rate, more difficult for borrowers to afford
- Average purchase loan based on MBA data is approximately \$260,000 nationwide
- MBA data indicates industry costs of originating have more than doubled in recent years, in part as result of increased compliance costs
- Dodd-Frank provides CFPB broad discretion to increase points and fees cap to make QM protections available for smaller loans

MBA Suggested Changes to Smaller Loan Standards

Current Rule		Recommended	
Loan Amount	Fees and Points Cap	Loan Amount	Fees and Points Cap
		\$200,000 and up	3%
		\$150,000 to \$199,999	\$6,000
\$100,000 and up	3%	\$100,000 to \$149,999	4%
\$60,000 to \$99,999	\$3,000	\$80,000 to \$99,999	\$4,000
\$20,000 to \$59,999	5%	\$20,000 to \$79,999	5%
\$12,500 to \$19,999	\$1,000	\$12,500 to \$19,999	\$1,000
Less than \$12,500	8%	Less than \$12,500	8%
		new tiers/caps	

2. Raise the APR Threshold to 200 basis points over APOR in order to allow more qualified borrowers to access safer, more affordable QM credit.

- Current dividing line between QM safe harbor loans and QM rebuttable presumption loans is 1.5% above the Average Prime Offer Rate (APOR) for a comparable loan.
- Potential liability and litigation costs for ability to repay claims outside the QM safe harbor have led many lenders to confine their lending to QM safe harbor loans.
- Sustainable QM loans are unavailable to too many borrowers because of infirmities in APOR, where dividing line is drawn, and uncertainty about liability.
- Expansion of the threshold between QM safe harbor and QM rebuttable presumption loans will mitigate the APOR problem and ensure that borrowers who qualify for loans at higher rates are served by safe, sustainable, and more affordable QM loans

3.Exclude from points and fees title insurance premium retained by an affiliate of the lender at least to extent it exceeds .5 percent or 50 bps of the loan amount

- Exclusion of some or all of premium for title insurance retained by an affiliate of the lender would help ameliorate harm caused by ATR/QM rule's differential treatment of bona fide third party charges of affiliated entities
- Title insurance premiums comprise one of largest costs at closing. Premiums are regulated by or filed with states so they are same to borrowers whether insurance is obtained from affiliated or non-affiliated providers.
- Removing some of premium from points and fees calculation will allow affiliated providers to compete in marketplace and allow lenders to better control costs and otherwise improve closing experience for borrowers

4. *Discount Points*

- Starting rate for application of discount points issue addressed in September 4, 2013 guidance by MBA
- Questions persist about how much rate reduction is needed per *bona fide* discount point under “industry standards”
- Discount points may not be available to borrowers unless issue clarified

5. *Up-front Mortgage Insurance*

- Can only be excluded up to FHA amount and if refundable *pro rata*
- No clear definition of *pro rata*

6. *Residual Income*

- Residual income is key to determining ability to repay for rebuttable presumption QM loans
- Yet, the Bureau has not advised what standards to use. VA? Otherwise?

And variety of other concerns in process of identifying with ATR/QM and other rules

1. Cure Procedures – *Rules, particularly QM, should allow lenders to cure calculation errors and other processing mistakes*

- Without such procedures, lenders forced to avoid transactions at boundaries of QM's APR, points and fees and DTI limits, depriving too many qualified borrowers of affordable, sustainable credit
- HOEPA rules include cure procedure which ensures prompt corrective action and more favorable loans for borrowers

2. Process for Provision of Written Guidance - *CFPB process should provide timely, reliable written guidance on regulatory requirements rather than forcing stakeholders to await publication of formal revisions and commentary or rely on oral guidance that can be inconsistent*

- Absence of timely, authoritative written guidance from CFPB has resulted in inconsistent and conservative guidance from some investors. This has harmed consumers , for example, by depriving them of beneficial loan features

RESPA-TILA Integration

- November 20, 2013, CFPB) issued final RESPA-TILA integration rule.
- Dodd-Frank Wall Street Reform Act (“Dodd-Frank”) requires CFPB to propose rules and model disclosures to combine and integrate required disclosures under Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA).
- CFPB offered multiple iterations of combined forms for comment prior to proposed rule in July 2012. Proposal included model disclosures and rules governing how and when lender must provide forms and tightens restrictions on cost variations from Loan Estimate to Closing Disclosure.
- Rule presents major implementation challenges including systems, business process and and training to operationalize forms and requirements
- Final rule has 20 month implementation period - requires new forms and associated rules implemented by **August 1, 2015.**

- Loan Estimate combines RESPA's Good Faith Estimate (GFE) and TILA's Early Truth in Lending (TIL) form.
- The Loan Estimate generally contains (can vary somewhat for different loan types):
 - First page includes: (1) identifying information describing borrower and loan, (2) loan terms, amount, payments and rate; (3) particular loan features such as prepayment penalties and balloon payments; (4) projected monthly payments showing any increases; and (5) estimated cash to close and closing costs.
 - Second page breaks down closing costs and includes details on prepaid and escrowed amounts and cash to close.
 - Third page contains series of additional disclosures regarding: total payments over five years; APR; a new disclosure, Total Interest Payment (TIP); appraisal availability to borrower, whether loan is assumable, requirement for homeowner's insurance; late payment policies; refinancing not guaranteed, and **possibility of servicing transfer.**

•The new “Closing Disclosure” merges and replaces the final Truth in Lending “TIL” statement and the RESPA-required HUD-1 settlement statement.

Contents: Five-page [Closing Disclosure](#) is structured as follows:

- First page is essentially same as first page of Loan Estimate and contains: (1) identifying information describing borrower and loan; (2) loan terms, amount, payments and rate; (3) particular loan features such as prepayment penalties and balloon payments; (4) projected payments showing any increases; and (5) estimated cash to close and closing costs.
- Second and third pages include closing cost details and a calculation of cash to close and a summary of the real estate transaction.
- Fourth and fifth pages provide several disclosures regarding: whether loan is assumable; whether loan has demand feature: requirement for homeowner’s insurance; late payment policies; refinancing cannot be guaranteed; **potential for servicing transfer**; appraisal availability to borrower; APR; finance charge; amount financed; and new disclosure of Total Interest Percentage (TIP) that includes total amount of interest paid over loan term as a percentage of loan amount.

The New Tolerances Governing Variation from Loan Estimate to Closing Disclosure

- Final rule tightens tolerances restricting increases from Loan Estimate to Closing Disclosure) for certain charges. Rule applies a “zero tolerance” or prohibits increases in:
 - Lender or broker charges;
 - Fees charged by an affiliate of the creditor;
 - Fees charged by service providers selected by the creditor; and
 - Charges for services for which consumer is not permitted to shop (i.e., where consumer must select from list of providers furnished by lender)
- Generally, other third-party charges are subject to ten percent limit overall on increases from Loan Estimate. There are limited exceptions to ten percent limit, including:
 - consumer requested change,
 - consumer request for a service provider not identified by lender,
 - when information provided at application was or becomes inaccurate,
 - the Loan Estimate expires or other valid changes in circumstance occur.
- When an exception applies, lender generally must provide updated Loan Estimate form within three business days.
- **Challenges** - Third party and affiliate relationships

The “3 Day Waiting Period” After Providing the Closing Disclosure

- **Provision of Forms:** The rule makes lenders responsible for delivering Closing Disclosure to the consumer, but lender may use settlement agent to provide form, with lender retaining responsibility.
- Rule requires creditor to provide the Closing Disclosure to the borrower **at least three business days** before the consumer closes on the loan.
- If creditor makes certain specific changes between time Closing Disclosure form is provided and closing, a new form must be generated and an additional three-business-days after receipt of the new form before closing. The following changes require redisclosure:
 - (1) the creditor makes changes to the APR above $\frac{1}{8}$ of a percent for most loans (and $\frac{1}{4}$ of a percent for loans with irregular payments or periods);
 - (2) changes of the loan product; or
 - (3) addition of prepayment penalty to the loan
- Less significant changes can be disclosed without an additional 3 day period. Note that the final rule is an improvement over the proposal that would have required re-disclosure for nearly all changes.

“3 Day Waiting Period” Presents Significant Implementation Challenges

- **Lender Responsibility**
- **TILA Liability**
- **Challenge** for lender is ensuring coordination/compliance of third parties or affiliates, too.
- **Technology and communication key**

- Rule requires creditors to retain evidence of compliance with integrated disclosure provisions of Regulation Z for three years after consummation of transaction, except that creditors must retain Closing Disclosure and all documents related to the Closing Disclosure for five years after consummation, consistent with requirements of existing Regulation X.
- Rule does not require that records be kept in a machine readable format as was proposed; however, CFPB will continue to study idea.
- Rule also does not require “all in” APR”. CFPB has indicated they will continue to study “all in” APR standard.

Other Rules

- March 6, 2014 CFPB convened a SBREFA panel concerning new Home Mortgage Disclosure Act (HMDA) requirements

Dodd-Frank adds the following HMDA data elements (unless the CFPB decides otherwise):

- Total points and fees, and rate spreads for all loans (not just HPMLs);
- Risky loan features including teaser rates, prepayment penalties, and non-amortizing features;
- The length of the loan;
- Expanded lender information, including a unique identifier for the loan officer and the loan;
- Property value and improved property location information;
- Borrower Age and credit score.

CFPB **also considering requiring**: several new elements including:

- Mandatory reporting of reasons for denial;
- Debt-to-Income (DTI) ratio;
- Qualified Mortgage status of loan;
- Combined loan-to-value (CLTV) ratio;
- Automatic underwriting systems results;
- Additional points and fees information, including:
 - Total origination charges
 - Bona Fide and Total discount points
 - Risk-adjusted, pre-discounted interest rate
- Interest rate (HMDA requires APR currently);
- Whether loan has affordable housing deed restrictions;
- Manufactured housing data.

- CFPB might consider limiting its efforts only to that is required and even then requiring only aggregate data
- Any changes to HMDA data elements must be made carefully to avoid significant burden, data security, privacy and liability concerns
- CFPB also considering changing HMDA reporting thresholds and protocols

- Risk Retention/Qualified Residential Mortgage (QRM) rule repropose 8/28/2013
- Proposes “Preferred Alternative” QRM –
 - Incorporates current QM definition and QM as modified in future
 - Treats both safe harbor and rebuttable presumption loans as QRMs
 - Drops high down payment and low DTI requirements
- Alternative QM plus also offered for comment that:
 - Would require 30% down payment/70% LTV
 - Prohibits 30 or 60 day late payments
 - Excludes GSE/Agency patch
- Comments closed October 30, 2013
- Comment letter
 - Strongly supports Preferred Approach; strongly opposes Alternative

GSE Reform

- Last two weeks saw release of legislative text of Johnson-Crapo Discussion Draft (the Draft) - important step forward in reforming and improving housing finance system. Builds on Warner-Crappo
- Bipartisan effort attempts to ensure liquidity for residential and multifamily housing while also limiting risk to taxpayers.

Includes:

- Wind down of Fannie Mae and Freddie Mac, while protecting and repurposing their valuable infrastructure and assets;
- Multiple guarantors that will compete for lender's business, and multiple risk Authority for the FHLBs to aggregate and securitize loans – 10 percent capital;
- Multiple options for small lender access to the secondary market
- Single secondary market regulator, with clear authority to establish Guarantor capital standards and approve risk sharing transaction mechanisms;
- Explicit government guarantee applicable to the entire security, with significant private capital bearing the first-loss

- A common securitization platform that will encourage standardization in the pooling, servicing, and execution of mortgage-backed securities.
- Multifamily-specific provisions recognize importance of multifamily housing, the strength of the GSEs' existing multifamily executions, competition in multifamily finance, and the need for transition steps going forward;

Concerns with draft include:

- Authorities of FMIC to regulate non-bank, non-guarantor aggregators, and banks - duplicative;
- Differing regulatory treatment for aggregators and retail originators who sell direct;
- Poorly defined functions and limitations of the Guarantor, without adequate firewalls between Guarantor and other lines of business;
- Unclear and potentially excessive capital standards for Guarantors;
- Small Lender Mutual
- MBA working with Senate Banking Committee staff and other stakeholders

SAFE

- Asymmetrical qualification requirements for Los remain an issue
- Registered originators are not required to be tested
- Does not ensure consumers a consistent experience

- MBA proposes to amend SAFE so all originators take uniform test and registered organizations gain a safe harbor for new qualification requirements
- Would support transitional and reciprocal licensing efforts
- Would protect consumers evenly and allow qualified lenders to move more freely to address consumer needs

