Ability to Repay

And Qualified Mortgages

UTAH'S CREDIT UNIONS

Introduction

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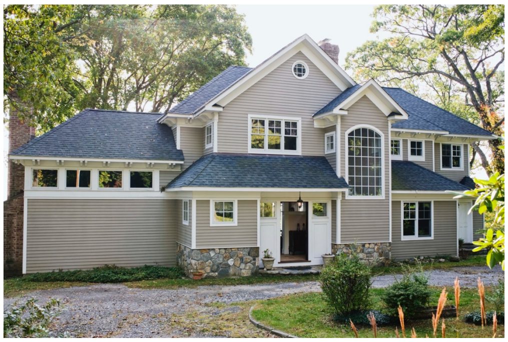
Introduction



- Part of Reg Z, 12 CFR § 1026.43
- Requires creditors to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan
- Compliance is Mandatory
- The way your comply is optional

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Introduction

- Provides certain protections from liability for residential mortgage loans that meet certain “low risk” requirements (“qualified mortgages” or “QMs.”)
- The rule also establishes different categories of QMs
- Applies to almost all closed-end consumer credit transactions secured by a dwelling. These are also known as “covered transactions.” (Does not apply to HELOCs, construction loans or lot loans)

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Basic Ability to Repay Requirements

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Basic Ability to Repay Requirements

At a bare minimum, a creditor must consider the following on all covered transactions:

1. Current or reasonably expected income or assets
2. Current employment status (if relied upon)
3. Current debts, alimony and child-support obligations
4. Credit history
5. Monthly mortgage payment
6. Monthly payment on any simultaneous loans secured by the same property
7. Monthly payments for property taxes, required insurance, and other costs related to the property (HOA fees, lot rental)
8. Monthly DTI as a ratio of gross monthly income

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Verification Using Third Party Documents

All parts of the Debt to Income (D to I) ratio must be verified using third party sources.

- Oral verification of employment from employer OK as long as you make a written record
- Use credit reports to verify debts
- Verify alimony and child support through court orders
- Verify HOA fees from statements

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Income Verification

- Only verify income needed to qualify for the loan
- Verify self-employment income through tax returns or profit and loss statements prepared by a third party
- May verify a consumer's income using an Internal Revenue Service (IRS) tax-return transcript, another record that provides reasonably reliable evidence of the consumer's income, or both.
- A creditor does not meet ATR requirements if it observes an inflow of funds into the consumer’s account without confirming that the funds are income.
- For example, a creditor would not meet the ATR requirements where it observes an unidentified $5,000 deposit in the consumer’s account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer’s personal income and not, for example, proceeds from the disbursement of a loan.

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Calculating the Debt to Income Ratio

Compare the borrower's income against:

- The loan you are underwriting
- Any simultaneous loans on the same property
- Mortgage-related obligations:
  - Property taxes
  - HOA fees
  - Levies and assessments
  - Ground rent
- Lease payments
- Current debt obligations, alimony and child support
- Other recurrent monthly debts

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Calculating the Debt to Income Ratio

Calculating the loan payment on ARMs:

- Use the greater of the fully indexed rate or the introductory rate (do not use a discounted rate to determine the ATR.) **Note – the fully indexed rate does not mean the "maximum rate possible," It means the rate based on the current margin and index without any discounts applied.
- Always base your calculations on substantially equal monthly payments that would fully amortize the loan.

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Calculating the Debt to Income Ratio

Calculating the payment on balloon loans:

- For non-higher priced loans: Use the maximum payment scheduled during the first five years after the first regular payment comes due.
- For higher-priced loans: Use the maximum payment in the payment schedule, including any balloon.
- Higher priced loans: For the most part, an APR that, as of the date the interest rate is set, exceeds the APOR by 1.5 percentage points or more for 1st lien loans and 3.5 percentage points or more for subordinate lien loans.

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APOR

- https://ffiec.cfpb.gov/tools/rate-spread

	5	10	15	20	30
12/26/22	5.56	5.37	5.62	5.62	6.28
1/2/23	5.74	5.59	5.92	5.92	6.49
1/9/23	5.74	5.48	5.89	5.89	6.53
1/16/23	5.66	5.46	5.66	5.66	6.26
1/23/23	5.58	5.43	5.29	5.29	6.02

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Qualified Mortgages

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Qualified Mortgages

The QM standard helps protect consumers from unduly risky mortgages. A court will treat a case differently if a consumer files an ATR claim where the loan is a QM as creditors will be presumed to have complied with the ATR requirements if they issue QMs. It also gives creditors more certainty about potential liability.

A Qualified Mortgage (QM) provides a presumption that the credit union has complied with ATR requirements by:

- Limiting certain risky features
- Limiting points and fees
- Meeting certain underwriting criteria

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Higher Priced QMs

- QMs that are higher-priced have a presumption that they comply with the ATR requirements, but consumers can rebut that presumption.
- Small Creditor and Balloon-Payment QMs are considered higher-priced if they have an APR that exceeds the APOR by 3.5 percentage points or more for both first-lien and subordinate-lien loans. (This definition DOES NOT carry over into other requirements for higher-priced mortgage loans).

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Types of QMs

There are four types of QMs:

- General
- Small Creditor QM (available to all small creditors)
- Small Creditor Balloon-Payment QM (available to small creditors that operate in rural and underserved areas.
- Seasoned QMs

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Operating in Rural and Underserved Areas

- A creditor operates in a rural or underserved area if the creditor originated at least one covered transaction secured by a first lien on a property located in an underserved or rural area during the preceding calendar year.
- For loans applications received between January 1 and April 1, the creditor operates in a rural or underserved area if the creditor originated at least one covered transaction on a property located in an underserved or rural area during the preceding two calendar years.

**Use the CFPB's rural and underserved area tool to determine if a loan was made in a rural or underserved area:

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Requirements that apply to all QMs

Requirements that are common across all types of QMs:

- A prohibition on negative amortization or interest-only payments
- A prohibition on loan terms in excess of 30 years
- Limits on points and fees

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General QM

- Loan feature limitations
- Loan term limit
- Points and fees limit
- Underwrite based on fully amortizing schedule using the maximum rate permitted during the first five years after the first periodic payment.
- Other underwriting factors must still be considered and verified
- Price Based Limits - the annual percentage rate does not (APR) exceed the average prime offer rate (APOR) for a comparable transaction by more than certain thresholds as of the date the interest rate is set

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General QM

Thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) in 2023:

Lien Position	Loan Amount	APR/APOR Spread
1st	≥ $124, 331	2.25
1st	≥ $74,599 but < $124,331	3.50
1st	< $74,559	6.5
1st (Manufactured home)	<$124,331	6.5
Subordinate	≥ $74,559	3.5
Subordinate	< $74,559	6.5

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Verification of income, assets, debt obligations, alimony, and child support

- ATR rules do not prescribe specific methods of underwriting that creditors must use.
- Creditors are required to verify the consumer's current or reasonably expected income or assets using third-party records that provide reasonably reliable evidence of the consumer's income or assets.
- A creditor must maintain written policies and procedures for how it takes into account, pursuant to its underwriting standards, income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination.
- A creditor must also retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination, including how it applied its policies and procedures, in order to meet this requirement.

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Safe harbor for compliance with specified external standards

A creditor complies with the requirement to verify current debt obligations, alimony and child support using third-party records it complies with verification standards in one or more of the following manuals:

- Chapters B3-3 through B3-6 of the Fannie Mae Single Family Selling Guide, published June 3, 2020;
- Sections 5102 through 5500 of the Freddie Mac Single-Family Seller/Servicer Guide, published June 10, 2020;
- Sections II.A.1 and II.A.4-5 of the Federal Housing Administration's Single Family Housing Policy Handbook, issued October 24, 2019;
- Chapter 4 of the U.S. Department of Veterans Affairs' Lenders Handbook, revised February 22, 2019;
- Chapter 4 of the U.S. Department of Agriculture's Field Office Handbook for the Direct Single Family Housing Program, revised March 15, 2019; and
- Chapters 9 through 11 of the U.S. Department of Agriculture's Handbook for the Single Family Guaranteed Loan Program, revised March 19, 2020.

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Small Creditor QM

A creditor can make these types of QMs only if it meets BOTH of the following requirements:

- Had assets below $2.537 billion (to be adjusted annually) at the end of the last calendar year.
- Creditor and affiliates together originated no more than 2000 first-lien, closed-end residential mortgages that are subject to the ATR requirements in the preceding calendar year (not required to count loans originated and kept in portfolio).

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Small Creditor QM

Small Creditor QMs have the following features:

- Loan feature limitations
- Loan term limit
- Points and fees limit
- Underwrite based on fully amortizing schedule using the maximum rate permitted during the first five years after the first periodic payment.
- Not subject to a forward commitment
- Keep in portfolio for at least three years
- Consider D to I
- Other underwriting factors must be considered and verified

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Small Creditor Balloon QM

- Available to small creditors that operate in rural or underserved areas.
- Loan feature limitations
- Balloon payment feature permitted
- Can exclude the balloon payment from the D to I calculation even if the loan is higher priced
- Loan term limit: No more than 30, no less than 5
- Points and fees limit
- Must not be subject to a forward commitment
- Keep in portfolio for at least three years
- Other underwriting factors must be considered and verified

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Seasoned QM

A residential mortgage loan is a Seasoned QM and receives a safe harbor from liability under the ATR/QM Rule if the loan:

- Satisfies certain product restrictions
- Does not exceed a points-and-fees limit
- Satisfies underwriting requirements
- Is held in portfolio until the end of the seasoning period (subject to certain enumerated exceptions)
- Meets certain performance standards at the end of the seasoning period.

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Seasoned QM

A loan made by any creditor, regardless of size, is eligible to become a Seasoned QM if at the end of the seasoning period it meets the requirements in the Seasoned QM Final Rule. Loans that satisfy another QM definition at consummation also can be Seasoned QM loans, as long as the requirements for Seasoned QMs are met.

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Agency/GSE QM

- Eligible for purchase, guarantee or insurance by GSEs (FNMA, FHLMC, FHA, VA, etc.)
- Was temporary until October 1, 2022

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Recordkeeping

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Recordkeeping

Keep records to evidence compliance for three years after consummation.

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Questions?

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Coming Soon

2023 Compliance Essentials Session 2 – Advertising Compliance

- Thursday, February 23
- 10:00 AM – 12:00 PM

Compliance Crüe Meeting

- Thursday, February 23
- 12:30 PM – 2:00 PM

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