

NAR Issue Brief

Qualified Mortgage (QM) Rule Summary

Executive Summary

NAR has been actively involved in shaping the debate and structure of the Qualified Mortgage (QM) Rule issued by the Consumer Financial Protection Bureau (CFPB) created by the Dodd-Frank Reform Act. **NAR achieved a significant victory in obtaining a safe harbor in the QM rule** for loans underwritten to the automated standards of Fannie Mae/Freddie Mac, the Federal Housing Authority, Veterans Administration and Rural Housing Service (within their respective loan limits) for up to seven years. For Fannie and Freddie, the safe harbor is for seven years or whenever they leave conservatorship, whichever comes first. Additionally, loans outside of those backed by the government that do not have risky features and do not have a total debt to income (DTI) of greater than 43% will receive safe harbor protections.

The 43% DTI cap basically means that if all your debt expenses (including total mortgage payment) do not exceed 43% of your gross income (before taxes are withheld) you will qualify for a QM. Other more risky loans that meet the other criteria but exceed 43% DTI will only receive rebuttable presumption protections.

Highlighted below are some of the issues contained in the 804-page QM rule that were of particular concern to NAR. There are many more provisions that could affect the cost or access to credit. As the industry and public absorb the implications of various provisions additional issues may arise. Some elements of the rule will require additional commentary as well. The interaction of other rules to be issued in the coming weeks may affect the QM rule and its impact on the industry, consumers, or both. NAR will continue to work with CFPB, Congress, and industry partners to address issues such as the definition of fees and points that are critical to consumers, our industry, and the real estate market overall. **The rule is scheduled to be effective January 10, 2014.**

Key Elements in the QM Rule

Fees and Points

- The rule requires numerous items to be considered in fees and points when determining for purposes of meeting the 3% cap. Most depend on circumstances too numerous to mention here. Two items jump out: (1) there will be circumstances when all or part of appraisal fees will be included and (2) there will be times when private mortgage insurance will be included (but not FHA and other government guarantee or insurance fees). Finally, with regard to the three major elements of HR 4323 “The Consumer Mortgage Choice Act” (112th Congress, Huizenga, Royce, Clay, Scott) or the 3% Cap Bill as we often call it, the Bureau addressed two elements directly and the third implicitly.

Double-counting of Loan Originator Compensation

- The CFPB has asked for more information. They recognize the harm of double-counting but apparently view the fees and points cap as a total compensation limit. In other words, they seem to want to count all revenues from both consumers and secondary market participants toward the 3% cap or find a way to account for all of this under the 3% cap at least with regard to the loan officer’s compensation. This could have serious potential to affect quality of service and access to credit depending on how it comes out because it will restrict how much and the manner in which loan officers and mortgage brokers can be compensated beyond loan officer compensation rules. It would also affect the bottom line on mortgage transactions.

Seller Financing

- Seller financiers will not be covered by the rule as long as they do five or fewer transactions in any given year. This is a NAR victory though seller financing may be affected in other Dodd-Frank rules yet to be released.

Balloon Loans in Rural Areas

- The rule allows for limited balloon payment loans to be made in rural areas.

Small Community Lenders

- Another provision that would apply to rural areas, but could apply to others, would allow greater flexibility for small community lenders.

Smaller Loans

- In a partial victory, the CFPB upped the small loan threshold from the proposed \$75,000 to \$100,000 and established a tiered fees and points approach that raises the 3% as loans get smaller in size from \$100k.

Title and Escrow for Taxes and Insurance

- Although the CFPB sympathized with NAR and other industry participants' concerns regarding title charges, CFPB cited the statutory language in Dodd-Frank as the reason not to address this issue. CFPB failed to address the issue of escrow for taxes and insurance. This issue would be corrected by new legislation in the 113th Congress similar to HR 4323.

Underwriting Standards for some Jumbo Loans

The biggest area of concern with regard to the underwriting standards for QM will be jumbo loans with DTI in excess of 43%. Although loans with these characteristics represent a relatively small percentage of the market, the new QM rule could affect lending in some high cost areas. Another area of concern regards manually underwritten loans for all loan amount levels with DTI in excess of 43% may also suffer. Manual underwriting can be an effective tool for scenarios where the buyer has some defect that fails them in the automated system but has many compensating factors that indicate they are credit worthy. Manual underwriting was a common tool, especially in FHA loans, to help borrowers qualify.