

CFPB Amendments to the Qualified Mortgage Rule

The Consumer Financial Protection Bureau (CFPB) released final rules¹ on July 10, 2013, making changes to its January 2013 final mortgage rules under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The rules take effect January 10, 2014. On May 2, 2013, CFPB published proposed rules to clarify the obligations of mortgage lenders under the January 2013 final rules, while assuring the continued availability of affordable mortgages for qualified consumers.

On June 3, 2013, NAR submitted comments on the proposed rules, generally supporting the goal of providing greater certainty on various requirements of the January rules and included specific comments related to the requirements implementing the Dodd-Frank Act requirements that mortgage lenders make a reasonable, good faith determination of a consumer's ability to repay the mortgage. For mortgages qualifying for "qualified mortgage" or QM status, creditors receive certain protections from liability in connection with their ability-to-repay determinations. NAR's recommendations, and the related CFPB decisions in the final rules, are summarized below.

QM Status Not Voided if Creditor Is Later Required to Repurchase the Loan for Reasons Wholly Unrelated to the Consumer's Ability to Repay

A mortgage loan qualifies for QM status if it is eligible to be purchased or guaranteed by a GSE or to be insured or guaranteed by HUD, VA, USDA, or RHS.² The CFPB's May 2013 proposed rules included clarifications for determining whether a requirement that the creditor repurchase or indemnify the GSE, HUD, VA, USDA, or RHS voids QM status. Consistent with the proposed rule, the new final rule states that if the repurchase or indemnification demand is wholly unrelated to the consumer's ability to repay the loan, QM status is not affected. NAR supported this clarification.

CFPB's final rule adopts the proposed clarifications to the official interpretations of the rule, and includes the "wholly unrelated" test in the rule itself. Among other changes, CFPB clarifies in the interpretations that matters wholly unrelated to the consumer's ability to repay are those wholly unrelated to credit risk or the underwriting of the loan, as opposed to matters related to securitization of the loans, for example.

Determination of QM Status for Loans that Meet GSE or Agency Requirements under a Written Agreement with Creditor

In May, CFPB proposed to allow creditors to determine eligibility of a mortgage loan for QM status if the loan meets GSE or Agency amended eligibility requirements under a written agreement between the creditor and the GSE or agency. In its comment letter, NAR supported flexibility to qualify for QM status based on individual written agreements, but raised concerns about this proposal because confidential written agreements could give a competitive advantage to creditors under the written agreements. NAR is specifically concerned about potential disadvantage to community banks, credit unions, and other smaller lenders. The NAR comment recommended that these written agreements should be made public to give other creditors the opportunity to seek equivalent treatment.

CFPB acknowledged the NAR concerns, but disagreed it would disadvantage smaller market participants since the intent was to preserve the "current market situation." CFPB chose not to require that these written agreements be made public "through this narrowly focused amendatory rulemaking, without further review." CFPB pledged to monitor the effect of the rule. NAR will also monitor the impact of the rule on smaller lenders and advise CFPB of any problems it identifies.

¹ References to the CFPB rule include Appendix Q, Standards for Determining Monthly Debt and Income, and related Official Interpretations.

² The U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or the Rural Housing Service.

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Appendix Q, Standards for Determining Monthly Debt and Income

1. Flexibility. NAR supported proposed changes to relieve creditors from unrealistic requirements, such as the requirement to predict the future with respect to the continuation of a consumer's income and the impact of future economic conditions on the income of self-employed individuals. NAR also supported eliminating requirements that self-employed consumers provide a business credit report and that creditors evaluate the sources of a business's income and general economic outlook for similar businesses in the area.

CFPB's final rule includes these NAR-supported changes.

2. Treatment of Income of Self-Employed Individuals. NAR also recommended further clarification in connection with self-employed individuals, especially the treatment of real estate commission income. In addition, the NAR comment suggested more flexibility for creditors when establishing a self-employed consumer's earning trend, such as where a real estate agent's increased income can be shown to be based on at least six months of documented success involving a significantly larger number of transactions.

With respect to NAR and other commenter requests for changes with respect to self-employed individuals, the CFPB has deferred action. It "appreciates those recommendations" but stated it needs to more fully evaluate them for consistency with the purposes of Appendix Q and the implications for all "stakeholders" (presumably including creditors and the full range of consumers who have income from self-employment). NAR welcomes information from REALTORS® about problems they encounter when applying for a mortgage.