

# 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). The QM rule will largely determine the underwriting standards that the majority of lenders will use to qualify prospective borrowers. **NAR achieved a significant victory in obtaining a safe harbor in the QM rule** for loans underwritten to the standards required by Fannie Mae/Freddie Mac, the Federal Housing Authority, Veterans Administration and Rural Housing Service (within their respective loan limits) for up to seven years. NAR supported a safe harbor to ensure the wide availability of affordable mortgage credit for qualified borrowers.

Borrowers will still be able to get a private loan as long as the loan does not have risky features and the borrower's total debt to income (DTI) isn't over 43%. This means that a borrower's total debt expense (including total mortgage payment) does not exceed 43% of their gross income (before taxes are withheld). These loans will still receive the QM safe harbor protections.

Highlighted below are some of the issues contained in the QM rule that were of particular concern to NAR. There are many more provisions that may affect the cost or access to credit. NAR will continue to work with CFPB, Congress, and industry partners to address issues 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 – 3% Cap

One of the factors used to identify a Qualified Mortgage under the Dodd Frank Reform Act, is a determination that the amount of points and fees charged does not exceed 3% of the mortgage value. NAR has expressed specific concerns about the treatment of affiliated and unaffiliated business structures under this provision and worked with Reps. Huizenga R-MI, Royce R-CA, Clay D-MO, Scott D-GA, to introduce HR 1077 “The Consumer Mortgage Choice Act” or the “3% Cap Bill” addressing these concerns.

The QM rule does require numerous items to be considered in fees and points when determining for purposes of meeting the 3% cap. It establishes circumstances when all or part of appraisal fees will be included and there will be times when private mortgage insurance will be included (but not FHA and other government guarantee or insurance fees). Below are some of the elements of the rule that HR 1077 seeks to change:

- Affiliate fees and points still count towards 3% cap, disadvantaging firms with affiliates and reducing consumer choice.
- Escrow for property insurance still counts toward the 3% cap when affiliates are involved in the transaction and it still remains unclear whether escrow for taxes is in or out when affiliates are involved though the indication is the CFPB would not count them.
- The CFPB has asked for more information about possible double-counting of Origination Compensation. 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 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.

- Finally, the Bureau is planning on counting "Loan Level Price Adjustments" (LLPAs) toward the cap on fees and points. These adjustments are made by the GSEs to increase the price of loans with low down payments, borrowers with lower credit scores, or both. In some cases, the LLPA can be as much as three points alone. If counted towards fees and points, fewer borrowers would qualify for QM loans.

### **Seller Financing**

NAR requested that the individuals offering seller financing not be subject to the QM Rule.

- 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 financiers still need to follow rules as outlined in the CFPB's Loan Originator Compensation rule which requires registration of seller financiers who complete more than 3 transactions in a single year.

### **Balloon Loans in Rural Areas**

Many rural properties don't fit typical lending criteria due to a lack of comparable properties and other factors. NAR supported the proposal to allow balloon mortgages in rural and underserved areas by qualified lenders.

- The rule allows for limited balloon payment loans to be made in rural areas. This flexibility will allow lenders in rural areas to continue to serve their communities.

### **Small Community Lenders**

NAR supports a new qualified mortgage category that offers further flexibility to small lenders.

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

### **Low Dollar Amount Loans**

NAR supported efforts to raise the 3% fee cap for low dollar amount loans. The fixed costs of providing a home loan could make it unprofitable for a lender to make a low dollar amount loan with a cap on the fees it is able to charge.

- 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 \$100,000.

### **Underwriting Standards for some Jumbo Loans**

Moving forward, the QM rule could impact the availability and costs of mortgages that are over the lending limit congress sets for Fannie, Freddie, and FHA.

"Jumbo loans" are loans above the dollar limits that congress sets for the GSEs and FHA. The limit for Fannie and Freddie is currently any loan greater than \$417,000 and \$625,500 in high cost areas. For FHA, it is any loan above \$729,500. The biggest area of concern with regard to the underwriting standards for QM will be jumbo loans with a DTI ratio 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.