Conventional Residential Lending / Qualified Mortgage (QM)/Ability to Repay

NAR Committee:

Conventional Financing and Policy Committee

What is the fundamental issue?

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, no creditor may make a mortgage loan without making a reasonable and good faith determination that the borrower has the "ability to repay" (ATR). The principal way lenders are expected to comply with this standard is by making a "Qualified Mortgage" or QM as it has become known, which provides the lender with more legal safety/clarity. The rule implementing the statute went in to effect on January 2014. The QM rule includes the Ability to Repay (ATR) elements and a few other items deemed to make the loan "safer" for consumers and is designed to capture most of the loans made in recent years. Nevertheless, concerns remain regarding the treatment of some lenders and also some of the standards in the rule itself.

A revised QM rule was finalized in December of 2020 that kept the product requirements of the initial QM rule in place, eliminated the 43% DTI cap, and maintained the pricing spread of 150 basis points over average prime offer (APOR) to define the legal safe harbor of compliance. A rebuttable presumption is offered to loans that are priced between 150 and 225 basis points above the APOR. The pricing-spread approach, while allowing for compensating factors, has proven problematic and needs refinement to prevent abuses of consumers. In addition, a loan that is held in portfolio for three or more years receives the QM status so long as it is sold no more than a single time in the initial 36 months.

I am a real estate professional. What does this mean for my business?

If the QM rule tightens credit further, it will negatively affect the ability of borrowers to access affordable mortgage credit. It will also affect consumers’ ability to choose which lender they want as some lenders are treated differently than others under the rules 3% cap on fees and points. Lenders who are affiliated with real estate, title, and insurance companies have to count more towards the cap than lenders who are not affiliated.

NAR Policy:

NAR supports a definition of QM and fees and points that promotes mortgage liquidity and availability. The QM should be broad based and cover a wide range of traditionally safe products and reliable underwriting criteria and should not discriminate against lenders with affiliates. NAR supports adjustments to the QM rule should its implementation result in significantly reduced access to credit or increased costs to consumers.

A definition of QM that only includes fees and points charged directly to the consumerwill promote liquidity and consumer choice. Also, CFPB should be flexible and make adjustments to such things as the 150 basis point spread if it is shown that access to credit has been reduced or has become unduly costly due to that

500 New Jersey Avenue, NW
Washington, DC 20001
(800) 874-6500
nar.realtor

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Opposition Arguments:

Opponents of NAR policy believe that a definition of QM that has a narrow definition of fees and points will not control profits and prices in the title industry.

Legislative/Regulatory Status/Outlook

In early 2020, the bank and financial regulators announced their intent to review and update the QRM. However, the CFPB was reviewing the QM rule, which was only finalized in December of 2020, but has not yet been implemented. Because the QRM rule depends on the QM rule, NAR and 34 co-signers have asked the regulators to delay their review of the QRM until the CFPB completes its review of the QM and finalizes any changes. The regulator delayed the review of the QRM until the QM is updated and is expected to take up its review in 2021.

Current Legislation/Regulation (bill number or regulation)

The ability-to-repay requirements were added as section 129C of the Truth in Lending Act (TILA) by the Dodd-Frank Act. TILA regulations are found at 12 CFR Part 226.

Legislative Contact(s):

Matt Emery, MEmery@nar.realtor, 202-383-1212
Ken Fears, kfears@nar.realtor, 202-383-1066

Regulatory Contact(s):

Matt Emery, MEmery@nar.realtor, 202-383-1212
Ken Fears, kfears@nar.realtor, 202-383-1066