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CFPB Ability-To-Repay (ATR) and Qualified Mortgage (QM) Rule

Effective January 10, 2014, credit unions are required to comply with the Consumer Financial Protection Bureau's (CFPB's) ability-to-repay (ATR) and qualified mortgages (QM) rules. These rules amended Regulation Z, which implements the Truth in Lending Act (TILA). The new rules generally require credit unions to make a reasonable, good faith determination of the member's ability to repay any loan secured by a dwelling and provides the credit union with certain protections from liability under this requirement for qualified mortgages (QMs). These FAQs are common questions received on the Compliance Helpline and are meant to provide credit unions with additional information and resources to assist with compliance. Credit unions can also find further information and resources on the mortgage rules on the MCUL's website, located here.

Please Note: Michigan Credit Union League & Affiliates services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union's attorney.

Q.1. What transactions are covered by the ATR/QM rule?

A. The rule applies to most **closed-end** consumer transactions secured by a dwelling including any real property attached to the dwelling. This rule includes loans in **first AND subordinate liens** and coverage is not limited to loans on the member's primary residence. **Excluded** transactions would include: open-end home equity lines of credit, time-share plans, reverse mortgages, temporary or bridge loan with terms of 12 months or less (with possible renewal) or construction phase of 12 months or less (with possible renewal) of a construction to permanent loan.

Q.2. What does the credit union need to do to comply with this rule?

A. Credit unions are now required to make a reasonable, good-faith determination before when the covered mortgage loan is consummated that member has a reasonable ability to repay the loan. The credit union will now need to consider **at least** the below 8 underwriting factors:

1. Current or reasonably expected income or assets (other than the value of the property that secures the loan) that the member will rely on to repay the loan.

2. Current employment status (if you rely on employment income when assessing the member's ability to repay).

3. Monthly mortgage payment for this loan. You calculate this using the introductory or fully-indexed rate, whichever is higher, and monthly, fully-amortizing payments that are substantially equal.

4. Monthly payment on any simultaneous loans secured by the same property.

5. Monthly payments for property taxes and insurance that you require the member to buy, and certain other costs related to the property such as homeowners association fees or ground rent.

6. Debts, alimony, and child-support obligations.

7. Monthly debt-to-income ratio or residual income, that you calculated using the total of all of the mortgage and non-mortgage obligations listed above, as a ratio of gross monthly income.

8. Credit history.

The credit union is required to verify the information relied upon using reasonably reliable third-party records (such as W-2 or payroll statements). Credit unions will also need to update their policies and procedures to document their compliance with these requirements. Requirements also include the limitation on prepayment penalties and record retention requirements.

Q.3. Do we have to deny all of our members a mortgage loan if their debt-to-income (DTI) ratio is over 43%?

A. No! The ATR requirements outlined in question 2 have no specific DTI requirements or thresholds. This specific portion of the regulation just requires you to **consider** the member's DTI ratio when underwriting the loan. The 43% DTI ratio requirement comes in to consideration when credit unions are seeking the safe harbor of the qualified mortgage (QM). See question 6 for more detail.

Q.4. How do I appropriately calculate the payments for the ATR requirements for a balloon loan?

A. If the balloon loan is **not** a higher-priced mortgage loan (HPML), you would use the maximum payment scheduled during the first five years after the first regular periodic payment comes due. If it is a HPML you would use the maximum payment in the payment schedule **including** any balloon payment.

Q.5. Our credit union is considered a "small creditor" under the rule, do I need to comply with the ATR rule?

A. Yes! All credit unions need to comply with the ATR rule and the underwriting requirements outlined in question #2.

Q.6. For a "qualified mortgage" (QM) what is the difference between the safe harbor and the rebuttable presumption?

A. Credit unions underwriting QMs will have a safe harbor, which means that a court will conclusively presume that you complied with the ATR rule. Loans that are considered **higher-priced QMs** are deemed to have a rebuttable presumption that they complied with the ATR requirements. This means that a court will presume the credit union complied with the ATR requirements, but the member may rebut the presumption. That means that the member must show that based on the information available to the credit union at the time the mortgage was made, the member did not have enough residual income left to meet living expenses after paying their mortgage and other debts.

Q.7. Should credit unions only underwrite QMs?

A. This is a business decision the credit union needs to make. In fact, the CFPB Director, Richard Cordray in a speaking to the American Mortgage Conference stated that "there are plenty of good loans made every year that are non-QM". He went on to say that "Lenders with strong underwriting standards have little to fear from the Ability-to-Repay rule" and "they should continue to offer the same kinds of mortgages to borrowers whom they evaluate as posing reasonable credit risk – whether or not they meet the criteria to be classified as qualified mortgages." Additionally, the NCUA Letter to Credit Unions (14-CU-01) also emphasizes that "credit unions may originate both QM and non-QMs." Therefore, credit unions that understand and adequately address the increased risk of non-QMs (no safe harbor protection) can make a business decision to provide non-QM loans to their members.

Q.8. To qualify for the balloon payment QM after January 10, 2016 the credit union must operate predominately in rural or underserved areas, how is that determined?

A. Credit unions must have more than half of their first-lien covered transactions, during any of the three preceding calendar years, secured by properties in rural or undeserved areas.