THE LAW OFFICE of DAVID R. ROCHEFORD, JR., P.C.

# Understanding CFPB Rules

CONSUMER FINANCIAL PROTECTION BUREAU

THEBESTCLOSINGS.COM 100% GUARANTEED SATISFACTION SM

# The Consumer Financial Protection Bureau

- The CFPB is a new federal agency
- Created by Dodd-Frank Wall Street and Consumer Protection Act
- Dodd-Frank Act became Law July 21, 2010
- CFPB Started operation July 1, 2011
- Responsible for supervising and creating hundreds of new rules and regulations under the Act
- Final rules to be effective **January 10, 2014**
- Rules regarding disclosures expect to be effective after August 2014
- Lender Must ensure third-party service providers understand and comply

# Ability to Repay (ATR) and Qualified Mortgage (QM) Rule

The CFPB's ATR/QM rule permits lenders to choose whether to write a loan under the general ability to repay standard. In this case, a lender must collect and verify certain information, but there are no restrictions on loan product features.

In the alternative, lenders seeking certain legal protections from consumer liability can choose to write a Qualified Mortgage, a type of loan that does not include certain product features and meets other criteria set forth by the CFPB.

# Ability-to-Repay (ATR)
# The General Rule

Lender may not make a residential mortgage loan unless:

- Lender makes reasonable and good faith determination
- Based on verified documented information
- At or before consummation
- That borrower will have a reasonable ability to repay the loan according to the loan terms

# Ability-to-Repay (ATR)

One of the key aspects of the DFWCP Act is the provision requiring lenders to ensure borrowers can pay back their mortgage loan. So, the Consumer Financial Protection Bureau (CFPB) issued its ability-to-repay regulation that says creditors/lenders must make a reasonable and good faith determination that the consumer has a reasonable ability to repay the loan and sets forth penalties if the lender fails to do this.

It Applies to Residential Mortgage Loans:

- Secured by 1-4 Unit Dwelling (Includes Mobile Home)
- Purchase, Refinance, Home Equity (Not HELOC)
- 1st Lien or Subordinate
- Principal Residence, Second Home or Investment

# Ability-to-Repay (ATR) Determinations

The final rule describes certain minimum requirements for lenders making ability-to-repay determinations, but does not dictate that they follow particular underwriting models. Effective for applications received after **January 10, 2014.** At a minimum, lenders generally must consider eight underwriting factors:

1. current or reasonably expected income or assets;
2. current employment status;
3. the monthly payment on the covered transaction;
4. the monthly payment on any simultaneous loan;
5. the monthly payment for mortgage-related obligations (taxes, insurance, HOA fees);
6. current debt obligations, alimony and child support;
7. the monthly debt-to-income ratio or residual income; and
8. credit history.

# Qualified Mortgage (QM)

A Qualified Mortgage is a mortgage that complies with the limits and criteria set by the Dodd-Frank Wall Street Reform and Consumer Protection Act and is automatically presumed to have complied with ability to repay requirements set by the CFPB.

Lenders who originate a Qualified Mortgage are provided a “safe harbor” from liability against claims of consumers who may argue that they did not meet the ATR criteria at the time of origination.

A QM generally focus on <u>prohibiting</u> certain risky features and practices, such as negative amortization and interest-only periods and loan terms longer than 30 years.

If a loan that is not <u>higher-priced</u> satisfies the QM criteria, a court will conclusively presume that the lender complied with the ATR rule.

# Types of Qualified Mortgage (QM)

There are four types of Qualified Mortgages:

**General** - may not have negative-amortization, interest-only, or balloon-payment features or terms that exceed 30 years. They also may not have points and fees that exceed the specified limits.

**Temporary** – Underwritten/insured according to Fannie Mae or Freddie Mac; VA, FHA, USDA or RHS. (Available until GSE exit federal conservatorship or January 10, 2021)

**Small Creditor** – Assets below $2 billion, originate no more than 500 first mortgages per year, hold for 3 years. May use different DTI rules.

**Balloon Payment** – Must be Small Creditor serving rural underserviced areas. May use different DTI rules. (Dukes County and Nantucket County)

# QM Type Chart

| | ATR Standard | General QM Definition | Agency/GSE QM (Temporary) | Balloon-Payment QM | Small Creditor QM | Small Creditor Balloon-Payment QM (Temporary) |
|---|---|---|---|---|---|---|
| **Loan feature limitations** | No limitations | No negative amortization, interest-only, or balloon payments | No negative amortization, interest-only, or balloon payments | No negative amortization or interest-only payments | No negative amortization, interest-only, or balloon payments | No negative amortization or interest-only payments |
| **Loan term limit** | No limitations | 30 years | 30 years | No more than 30 years, no less than 5 years | 30 years | No more than 30 years, no less than 5 years |
| **Points & fees limit** | No limitations | 3% | 3% | 3% | 3% | 3% |
| **Payment Underwriting** | Greater of fully indexed or introductory rate | Max rate in first 5 years | As applicable, per GSE or agency requirements | Amortization schedule no more than 30 years | Max rate in first 5 years | Amortization schedule no more than 30 years |
| **Mortgage-related obligations** | Consider and verify | Included in underwriting monthly payment[2] and DTI[3] | As applicable, per GSE or agency requirements | Included in underwriting monthly payment[2] and DTI[3] | Included in underwriting monthly payment[2] and DTI[3] | Included in underwriting monthly payment[2] and DTI[3] |
| **Income or assets** | Consider and verify | Consider and verify | As applicable, per GSE or agency requirements | Consider and verify | Consider and verify | Consider and verify |
| **Employment status** | Consider and verify | Included in underwriting DTI | As applicable, per GSE or agency requirements | No specific requirement | No specific requirement | No specific requirement |
| **Simultaneous loans** | Consider and verify | Included in underwriting DTI | As applicable, per GSE or agency requirements | Included in underwriting DTI | Included in underwriting DTI | Included in underwriting DTI |
| **Debt, alimony, child support** | Consider and verify | Consider and verify | As applicable, per GSE or agency requirements | Consider and verify | Consider and verify | Consider and verify |
| **DTI or Residual Income** | Consider and verify | DTI ≤ 43 percent | As applicable, per GSE or agency requirements | Consider and verify | Consider and verify | Consider and verify |
| **Credit History** | Consider and verify | Included in underwriting DTI | As applicable, per GSE or agency requirements | No specific requirement | No specific requirement | No specific requirement |

# Qualified Mortgage (QM)

Product Features:

- Loan Term - 30 Years of Less
- Regular Periodic Payments Substantially Equal (No interest only, negative amortization, balloon payments with limited exception.)

Underwriting:

- 43% DTI (very specific underwriting standards and calculations); or
- Alternative GSE/Federal Agency Standards (if at consummation, the loan is eligible to be purchased by Fannie or Freddie when still under conservatorship, or eligible for guarantee by HUD, VA, Rural Housing, then can be QM in other words the loan meets those underwriting standards. This alternative is time limited. If GSEs out of conservatorship or other federal agencies issue own rules, or 7 years, then this alternative expires.)

Maximum Points and Fees:

- for loans of $100,000 or more, have cap of 3%. For lesser loan amounts, other caps apply

# Higher Priced Qualified Mortgage (QM)

A Qualified Mortgage is higher-priced if:

- It is a first-lien mortgage for which, at the time the interest rate on the loan was set, the APR was 1.5 percentage points or more over the Average Prime Offer Rate (APOR).
- It is a subordinate-lien mortgage with an APR that, when the interest rate was set, exceeded the APOR by 3.5 percentage points or more.

For example, if the APOR is 5 percent at the time when the interest rate on a mortgage is set, then a first-lien mortgage is higher-priced if it has an APR of 6.5 percent or more.

# Rebuttable Presumption

QMs that are higher-priced are presumed to comply with the ATR requirements, but consumers can rebut that presumption.

Under a rebuttable presumption, if a court finds that a the mortgage was a higher-priced QM, a consumer can argue that the lender violated the ATR rule.

However, to prevail on that argument, the consumer must show that based on the information available at the time the mortgage was made, the consumer did not have enough residual income left to meet living expenses after paying their mortgage and other debts.

# Liability for Violation

- Actual Damages (Down Payment)
- Statutory Damages (Finance Charges and Fees)
- Court Costs and Attorney's Fees
- Defense to Foreclosure by Recoupment or Set Off
- Three Year Statute of Limitation except foreclosure action
- Applies to Lender and later assignee of Mortgage

# New Forms

The CFPB's 1,099-page Proposed Rule provides for the creation of a new Loan Estimate and Closing Disclosure to replace the current Truth In Lending (TIL), Good Faith Estimate (GFE) and HUD-1 Settlement Statement disclosures.

- Loan Estimate
- Closing Disclosure

# Loan Estimate

| | |
|---|---|
| Replaces | GFE and "early" TIL |
| Timing | Provided 3 days after application |
| Format | Page 1 – Basic loan information<br>Page 2 – Closing costs<br>Page 3 – Additional terms |
| APR | Pushed down to Page 3 |
| Signature | Borrowers sign and date bottom of Page 3 |

# Loan Estimate Form

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

*Save this Loan Estimate to compare with your Closing Disclosure.*

## Loan Estimate

| | |
|---|---|
| **DATE ISSUED** | 1/21/2013 |
| **APPLICANTS** | James White and Jane Johnson<br>123 Anywhere Street, Apt 678<br>Anytown, ST 12345 |
| **PROPERTY** | 456 Somewhere Avenue<br>Anytown, ST 12345 |
| **SALE PRICE** | $240,000 |

| | |
|---|---|
| **LOAN TERM** | 30 years |
| **PURPOSE** | Purchase |
| **PRODUCT** | 5 Year Interest Only, 5/3 Adjustable Rate |
| **LOAN TYPE** | ☒ Conventional ☐FHA ☐VA ☐ ____________ |
| **LOAN ID #** | 123456789 |
| **RATE LOCK** | ☐NO ☒ YES, until 3/22/2013 at 5:00 p.m. EST<br>*Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on* ***2/4/2013*** *at 5:00 p.m. EST* |

| **Loan Terms** | | **Can this amount increase after closing?** |
|---|---|---|
| **Loan Amount** | $211,000 | **NO** |
| **Interest Rate** | 4.375% | **YES** • Adjusts **every three years** starting in year 6<br>• Can go **as high as 8%** in year 9<br>• See **AIR table on page 2** for details |
| **Monthly Principal & Interest**<br>*See Projected Payments Below for Your Total Monthly Payment* | $769.27 | **YES** • Adjusts **every three years** starting in year 6<br>• Can go **as high as $1,622** in year 9<br>• Includes **only interest** and **no principal** until year 6<br>• See **AP table on page 2** for details |
| | | **Does the loan have these features?** |
| **Prepayment Penalty** | | **NO** |
| **Balloon Payment** | | **NO** |

**Projected Payments**

# New Application Definition

What constitutes an application:

- the borrower’s name,
- the borrower’s gross monthly income,
- the borrower’s Social Security number (e.g., to obtain a credit report),
- the property address,
- an estimate of the value of the property, and
- the mortgage loan amount sought
- no other information (i.e. information the lender deems necessary.

# Closing Disclosure

| | |
|---|---|
| Replaces | Final TIL and HUD-1 |
| Timing | Provided 3 days before closing |
| Format | Page 1 – Basic loan terms<br>Page 2 & 3 – Closing costs<br>Page 4 & 5 – Additional loan terms |
| APR | Pushed down to Page 5 |
| Signature | Borrowers sign and date bottom of Page 5 |

# Closing Disclosure Form

## Closing Disclosure

*This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.*

**Closing Information**

| | |
|---|---|
| **Date Issued** | 9/10/2012 |
| **Closing Date** | 9/14/2012 |
| **Disbursement Date** | 9/14/2012 |
| **Agent** | Epsilon Title Co. |
| **File #** | 12-3456 |
| **Property** | 456 Somewhere Ave<br>Anytown, ST 12345 |
| **Sale Price** | $180,000 |

**Transaction Information**

| | |
|---|---|
| **Borrower** | John A. and Mary B.<br>123 Anywhere Street<br>Anytown, ST 12345 |
| **Seller** | Steve C. and Amy D.<br>321 Somewhere Drive<br>Anytown, ST 12345 |
| **Lender** | Ficus Bank |

**Loan Information**

| | |
|---|---|
| **Loan Term** | 30 years |
| **Purpose** | Purchase |
| **Product** | Fixed Rate |
| **Loan Type** | ☒ Conventional ☐ FHA<br>☐ VA ☐ ________ |
| **Loan ID #** | 123456789 |
| **MIC #** | 000654321 |

| **Loan Terms** | | **Can this amount increase after closing?** |
|---|---|---|
| **Loan Amount** | $162,000 | **NO** |
| **Interest Rate** | 3.875% | **NO** |
| **Monthly Principal & Interest**<br>*See Projected Payments Below for Your Total Monthly Payment* | $761.78 | **NO** |
| | | **Does the loan have these features?** |
| **Prepayment Penalty** | | **NO** |
| **Balloon Payment** | | **NO** |

| **Projected Payments** | | |
|---|---|---|
| **Payment Calculation** | **Years 1-7** | **Years 8-30** |

# Three Day Rule

The lender is required to ensure that the borrower receives the Closing Disclosure no later than three business days before closing.

**Example:**

If settlement is scheduled for Thursday then the consumer must receive the disclosures by Monday.

Effectively, a three day waiting period after the final disclosure is received by the borrower;

Changes to the final disclosure will trigger a new three business day waiting period unless an exemption applies.

# Business Day and Receipt

**What is a "Business Day"**

- All calendar days except Sundays and Federal legal public holidays

**What constitutes "Consumer Receipt"**

- Different than delivery
- Three ways to deliver:
  - In person
    - Disclosure is deemed received by the consumer the day it is delivered in person
  - Mail/Fed-Ex/Courier
    - lender or settlement agent can presume the consumer received the disclosure three business days after mailing
    - This presumption may be rebutted by evidence that the consumer received the disclosures earlier or later than three business days.
  - E-mail
    - Same presumption as for mail
    - lender or settlement agent must comply with E-Sign and must get prior approval from the consumer to use electronic disclosure.

# Can Buyer Waive the Waiting Period?

## Bona Fide Personal Financial Emergency

- Fact intensive
- One example: Imminent foreclosure sale

## How to waive?

- Can only waive after receiving the disclosure
- Give the lender a dated written statement describing the emergency
  - Specifically modifies or waives the waiting period
  - Signed by all consumers who are primarily liable on the legal obligation
- Printed forms for this purpose are prohibited

# Changes That Will Not Trigger

Five category of changes that will not trigger new waiting period

- Seller – Buyer negotiation
- Minor cost increase
- Post Closing change to government fee
- Correct non numerical clerical error
- Tolerance refund

# Post Receipt Seller – Buyer negotiation

After the consumer receives the disclosures, the consumer and the seller agree to make changes to the transaction and those changes affect the costs of the items disclosed

Example

- Consummation scheduled for Thursday
- Consumer received the disclosures on Monday
- Walk-through inspection on Wednesday morning
- Discovery of damage to the dishwasher
- Parties agrees to $500 credit
- Okay to close on Thursday

# Post Delivery Minor Cost Increase ($100)

Amount actually paid by the consumer does not exceed the amount disclosed by more than $100

- Aggregate not each item

Example

- Disclosure has homeowner’s insurance premium of $800
- Premium is actually $850
- $50 understatement is not a violation
- Okay to close with corrected disclosure

# Post Closing Change (government fee only)

A locality could change its recording fees, without advance notice

- Okay to close and send revised disclosures three days after determining the actual fee
- Re-disclosure must take place within 30 days of closing

Example:

- Closing occurs on a Monday
- Recorder changes fees on Tuesday before settlement agents records documents
- Fees charged by the recorder's office differ from those disclosed
- Place revised disclosure in the mail no later than Friday, three business days after Tuesday

# Correction of Non-numerical Clerical Error

Inadvertent or technical errors will not be considered violations of the disclosure requirements

- An error is considered clerical if it does not affect a numerical disclosure

Example

- Disclosure identifies the incorrect settlement service provider as the recipient of a payment
- Okay to close
- Creditor/settlement agent must provide revised disclosures reflecting the correct payee
- As soon as reasonably practicable
- But no later than 30 days after closing

# Tolerance refund

If an amount listed on the disclosure exceeds the tolerance, which would entitle the consumer to a refund, the refund can be included in the disclosure without triggering a new waiting period

**Example**

- Disclosure has creditor tolerance violation
- Creditor cures violation at or after closing
- Okay to close as scheduled
- New disclosure must be created
  - As soon as reasonably practicable
  - No later than 30 days after consummation

# CFPB

Presentation End

**THANK YOU!**

# Mission Statement

THE LAW OFFICE of DAVID R. ROCHEFORD, JR., P.C.

Our mission is to:

- provide the finest quality service and expertise in the title and settlement service business.
- provide timely and accurate transactions that exceed all expectations.
- treat every customer as a valued partner.
- handle every transaction as a unique project.
- provide personalized attention to all of our clients and business partners.
- provide innovative solutions.
- have a staff that is pleasant, empowered and accountable.
- make customer satisfaction our number-one priority.
- do business with uncompromised integrity.

TheBestClosings.com 100% GUARANTEED SATISFACTION SM

# References

CFPB – Know Before You Owe:
http://www.consumerfinance.gov/knowbeforeyouowe/

National Notary Association:
http://www.nationalnotary.org/bulletin/bulletin_articles/mortgage_servicers_falling_short.html

CFPB – Compliance Guide:
http://files.consumerfinance.gov/f/201308_cfpb_atr-qm-implementation-guide_final.pdf

QualifiedMortgage.org:
http://www.qualifiedmortgage.org

Regulatory implementation
http://www.consumerfinance.gov/regulatory-implementation/

Before and after:
http://www.consumerfinance.gov/knowbeforeyouowe/compare/