

December 4, 2013

## Outlook Live Webinar Small Creditor Qualified Mortgage

Visit the Outlook Live website at [www.consumercomplianceoutlook.org](http://www.consumercomplianceoutlook.org)



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### Disclaimer

- The Bureau issued the Ability-to-Repay Final Rule in January of 2013 to implement provisions under the Dodd Frank Wall Street Reform and Consumer Protection Act.
- The rule has been further clarified and updated by rulemakings issued through November 2013.
- These amendments will take effect on January 10, 2014.
- This presentation is current as of December 2, 2013. This presentation does not represent legal interpretation, guidance or advice of the Bureau. While efforts have been made to ensure accuracy, this presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements. This document does not bind the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.



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### Ability-to-Repay/Qualified Mortgages

#### General ability-to- repay requirement

- Applies broadly to closed-end transactions secured by a dwelling
- Requires creditor to make a reasonable, good faith determination that consumer can repay the loan

#### Qualified mortgages

- Restricts certain loan features, caps points and fees, and imposes certain underwriting requirements
- Safe harbor for loans below the higher-priced mortgage threshold; rebuttable presumption for higher-priced loans



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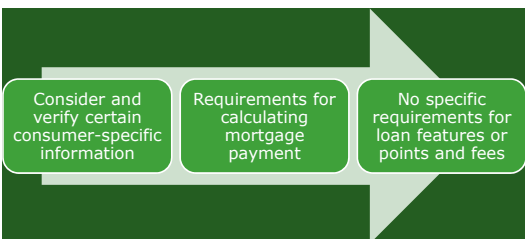
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### Ability-to-Repay Requirement

Creditor must make a reasonable and good faith determination that the consumer will have a reasonable ability to repay the loan according to its terms



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### Qualified Mortgages (Four categories)

Four different categories of qualified mortgages; two uniquely available to small creditors

- Traditional Qualified Mortgage (1026.43(e)(2))
- Temporary Qualified Mortgage (1026.43(e)(4))
- Small Creditor Portfolio Qualified Mortgage (1026.43(e)(5))
- Small Creditor Balloon Qualified Mortgage (1026.43(e)(6) and 1026.43(f))

Each category provides a presumption of compliance with the ability-to-repay requirement



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### Qualified Mortgage: General QM (43% DTI)

#### Limits on loan features

- No negative amortization or interest-only periods
- No balloon payments (except for certain portfolio loans by small creditors)
- Loan term may not exceed 30 years

#### Points and fees cap

- Generally 3% of total loan amount
- Higher caps for loans <\$100,000
- Up to two additional bona fide discount points allowed depending on rate

#### Relevant underwriting requirements

- Use maximum rate in first five years after first payment, full amortization
- Consider and verify income or assets
- Consider and verify current debt obligations, alimony, and child support
- Monthly debt-to-income ratio cannot exceed 43%



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### Qualified Mortgage: Temporary Alternative QM

Limits on loan features	<ul style="list-style-type: none"> <li>• Same as permanent definition</li> </ul>
Points and fees cap	<ul style="list-style-type: none"> <li>• Same as permanent definition</li> </ul>
Relevant underwriting requirements (alternative)	<ul style="list-style-type: none"> <li>• Must be eligible for purchase, guarantee, or insurance by:                             <ul style="list-style-type: none"> <li>• Fannie Mae or Freddie Mac (sunsets when conservatorship ends or 7 years)</li> <li>• HUD, VA, Department of Agriculture or Rural Housing Service (sunsets when agency rules take effect or 7 years)</li> </ul> </li> <li>• Factors wholly unrelated to ability-to-repay are excluded from eligibility criteria</li> </ul>

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### Qualified Mortgage: Small Creditor Portfolio QM

Limits on loan features	<ul style="list-style-type: none"> <li>• Same as permanent definition</li> </ul>
Points and fees cap	<ul style="list-style-type: none"> <li>• Same as permanent definition</li> </ul>
Relevant Underwriting Requirements	<ul style="list-style-type: none"> <li>• Same as permanent definition, but no 43% DTI requirement</li> </ul>
Special Requirements	<ul style="list-style-type: none"> <li>• Creditors must have &lt;\$2 billion in assets and (with affiliates) originate ≤500 covered mortgages per year; no restriction on location</li> <li>• Must generally be held in portfolio for 3 years</li> <li>• Threshold for safe harbor increased to 3.5% above APOR</li> </ul>

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### Qualified Mortgage: Balloon QM

Limits on loan features	<ul style="list-style-type: none"> <li>• Same as permanent definition, although balloons are not restricted</li> </ul>
Points and fees cap	<ul style="list-style-type: none"> <li>• Same as permanent definition</li> </ul>
Relevant Underwriting Requirements	<ul style="list-style-type: none"> <li>• Same as permanent definition, but no 43% DTI requirement</li> </ul>
Special Requirements	<ul style="list-style-type: none"> <li>• Creditors must have &lt;\$2 billion in assets and (with affiliates) originate ≤500 covered mortgages per year</li> <li>• &gt; 50% of first-lien mortgages made in rural or underserved counties in the preceding calendar year</li> <li>• Must generally be held in portfolio for 3 years</li> </ul>
Two-year transition period	<ul style="list-style-type: none"> <li>• Effective through 2015 while Bureau reconsiders "rural" and "underserved" definitions</li> <li>• Allows small creditors to make balloon payment QMs regardless of "rural" or "underserved" status</li> <li>• Threshold for safe harbor increased to 3.5% above APOR</li> </ul>

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### Step-by-Step: Small Creditor QMs

Two special categories of QMs for small creditors:

- Small creditor portfolio QM
- Small creditor balloon QM

Provides additional flexibility to small creditors:

- Safe harbor expanded to 3.5% over APOR

Follow the following steps (next nine slides) to determine eligibility – of both the creditor and the transaction – for these types of QMs




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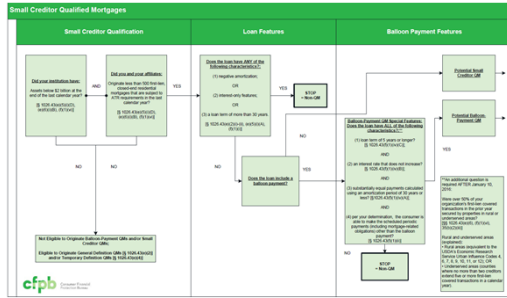
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### Small Creditor Flow Chart, page 1




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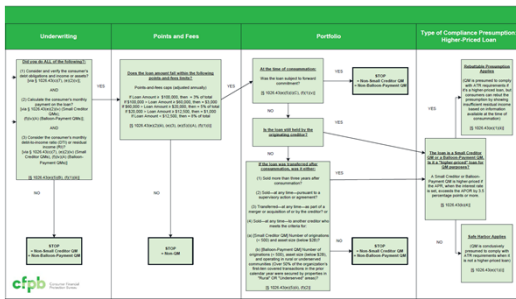
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### Small Creditor Flow Chart, page 2




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### Step 1: Are you a small creditor?

Small Creditor Criteria (1026.35(b)(2)(iii)(B), and (C))

- Did your institution have assets below \$2 billion at the end of the last calendar year?
- Did you and your affiliates originate 500 or fewer closed-end residential mortgages that are subject to the ability-to-repay requirements in the last calendar year?

If you meet these criteria, you may be eligible to originate small creditor QM or small creditor balloon QM



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### Step 2: Loan Features

Does the loan have any of the following characteristics?

- Negative amortization
- Interest-only periods
- Loan term of greater than 30 years
- Balloon payment

If the loan provides for none of the four characteristics, it may be eligible for the small creditor QM category

If the loan provides for a balloon payment (but none of the other three characteristics), it may be eligible under the small creditor balloon QM category [see slide 19]



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### Step 3: Underwriting

Do you do the following?

- Consider and verify income or assets (required for all loans)
- Consider and verify current debt obligations, alimony, and child support (required for all loans)
- Consider monthly DTI or residual income (required for all loans)
- Underwrite the monthly payment using the maximum rate in first five years after first payment and full amortization (required for all QMs)



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### Step 4: Points and Fees

Do the transaction's total "points and fees" (as defined in 1026.32(b)(1)) not exceed:

- For loans of \$100,000 or more, 3% of the total loan amount
- Higher caps for small dollar loans:
  - \$60,000-99,999: \$3,000
  - \$20,000-59,999: 5% of total loan amount
  - \$12,500-19,999: \$1000
  - Less than \$12,500: 8% of total loan amount
- Figures are indexed for inflation



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### Step 5: Portfolio Requirements

Loan not subject to a forward commitment at consummation (unless to another small creditor)

Restrictions on sale or transfer for three years after consummation

- Generally must be held in portfolio for three years
- May only be transferred or sold in first three years
  - To another small creditor
  - Pursuant to a merger or acquisition
  - Pursuant to a supervisory agreement or action



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### Small Creditor Portfolio QM

If the creditor and loan meet all of these criteria, the loan will be eligible for small creditor QM status. Note:

- No specific DTI threshold
- No requirement to be eligible for purchase or insurance by GSEs, FHA, etc.
- No geographic component (even after January 10, 2016)

If the creditor and loan meet all of these criteria but the loan has a balloon feature, the loan may still be eligible as a small creditor balloon QM



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### Small Creditor Balloon QM (special category)

Does the creditor and loan meet the other criteria and does the loan have all of the following characteristics?

- Loan term of 5 years or longer
- Interest rate that does not increase
- Scheduled payments that are substantially equal and calculated using an amortization period that does not exceed 30 years

Note: After January 10, 2016, creditor will need to satisfy rural or underserved criteria



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### Qualified Mortgage: Presumption of Compliance

**Safe Harbor**

- Loan satisfies QM criteria and
- APR is less than:
  - First liens: APOR + 1.5%
  - Second Liens: APOR + 3.5% OR
- Loan satisfies small creditor QM or balloon QM and
- APR is less than APOR + 3.5%

**Rebuttable Presumption**

- Loan satisfies QM criteria and
- APR equals or exceeds:
  - First liens: APOR + 1.5%
  - Second Liens: APOR + 3.5%
- Rebuttal limited to insufficient residual income



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### Contact Info

Questions?

- Submit questions to:
- CFPB\_reinquiries@cfpb.gov or call 202-435-7700
- <http://www.consumerfinance.gov/regulatory-implementation/>



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