# New Mortgage Rules Update

# OBJECTIVES

To provide information regarding the new mortgage rules, in particular:

- Ability-to-Repay/Qualified Mortgages;
- Mortgage Loan Origination Compensation;
- High-Cost Loans under HOEPA; and
- Mortgage Servicing Standards.

# RESOURCES

## Interagency Guidance

- Press release dated October 22, 2013 – “Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards” (PR-91-2013)
- "Qualified vs. non-Qualified mortgage loans: Interagency Statement on Supervisory Approach" (FIL-59-2013)
- “Interagency Consumer Compliance Examination Procedures for Mortgage Rules Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act” (FIL-9-2014)

# Ability-to-Repay / Qualified Mortgages

**Scope**

The new rule applies to:

- All consumer-purpose, closed-end loans secured by a dwelling.
  - Purchase-money, refinancing, home-equity loans
  - First and subordinate liens
- Referred to as "covered transactions"

**Effective Date: January 10, 2014**

# Ability-to-Repay / Qualified Mortgages

**Does not apply to:**

- HELOCs;
- Timeshare plans;
- Reverse mortgages;
- Certain temporary or “bridge loans”
- Certain construction-to-permanent loans;
- Business-purchase loans;
- Loan modifications, except a “refinancing” under Regulation Z.

# Ability-to-Repay / Qualified Mortgages

**General Ability-to-Repay (ATR)**

A creditor must “not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.”

**Creditor Generally Must Consider Eight Underwriting Factors**

1. Current and reasonably expected income or assets
2. Current employment status
3. Monthly payment on mortgage
4. Monthly payment on simultaneous second (including HELOC) creditor knows or has a reason to know of
5. Monthly payment on mortgage-related obligations
6. Current debt obligations, alimony, and child support
7. Monthly debt-to-income or residual income
8. Credit history

# Ability-to-Repay / Qualified Mortgages

- Under the Ability-to-Repay / Qualified Mortgage Rules, lenders are not required to make Qualified Mortgages.
- The bank must make a business decision whether to offer Qualified Mortgages or Non-Qualified Mortgages; however, all lenders are required to meet the Ability-to-Repay standards.
- Making Qualified Mortgages allows the lender a presumption of compliance with the Ability-to-Repay standards.

# Ability-to-Repay / Qualified Mortgages

## Qualified Mortgages

- Qualified mortgages are entitled to a presumption that they comply with the ATR requirements.
- Five categories of QMs:
  - The Standard QM;
  - The Temporary "government patch" QM;
  - Small creditor portfolio QM;
  - Temporary balloon-payment QM; and
  - Small, rural or underserved, portfolio balloon-payment QM.

# Ability-to-Repay / Qualified Mortgages

**Standard QM**

- Regular, periodic payments that are substantially equal with no negative amortization, interest-only payment, or balloon payments
- Loan term may not exceed 30 years
- Limit 3% points and fees:
  - Cap adjusted upward for smaller loans
  - Some origination costs excluded
- Underwriting must take into account the monthly payment of all mortgage-related obligations
- Income or assets relied on in making ATR determination must be considered and verified
- 43% back-end DTI

# Ability-to-Repay / Qualified Mortgages

**Scenario**

- 30-year fixed rate mortgage loan in the amount of $250,000 at an interest rate of 7%
- Monthly payments of $1,663.26, with 360 substantially equal payments
- Total points and fees are less than 3% of the total loan amount
- DTI ratio was calculated at 39%
- Loan's APR is 3.35 percent above APOR
- The bank did properly verify the borrower's income and debts through reliable third-party sources.

Question: Does this loan meet the requirements of a Standard QM?

# Ability-to-Repay / Qualified Mortgages

**Temporary Government Patch QM**

- The standard DTI cap ***does not*** apply
- Three of the standard QM requirements ***do*** apply:
  - Regular, periodic payments which are substantially equal, no negative amortization, interest only, or balloon payments;
  - Loan term cannot exceed 30 years; and
  - Total points and fees may not exceed 3% or other applicable cap.
- Loans must be ***eligible*** to be
  - Insured or guaranteed by VA, USDA, or RHS.
- Pursuant to its authority, HUD issued a QM rule, which became effective on January 10, 2014. Therefore, loans guaranteed by HUD and insured by FHA no longer fall under the temporary government patch.

# Ability-to-Repay / Qualified Mortgages

**Small Creditor Portfolio QM**

- The standard DTI cap ***does not*** apply

- All other requirements of a Standard QM apply, including the ban on balloon payments.

**Eligible Creditor**

- Creditor and its affiliates must have originated 500 or fewer first-lien covered transactions during previous calendar year; and
- Creditor must have less than $2 billion in assets at end of previous calendar year.

# Ability-to-Repay / Qualified Mortgages

**Temporary balloon-payment QM or Small, rural or underserved, portfolio balloon-payment QM**

Balloon mortgages do not meet the requirements for the standard QM. However, certain balloon-payment mortgages may qualify as balloon-payment QMs.

- Limited to small creditors
- The standard DTI cap ***does not*** apply
- The ban on balloon payments ***does not*** apply

- After 2 years, the lender must operate predominantly in rural or underserved areas to be eligible

# Ability-to-Repay / Qualified Mortgages

**Requirements**

- Scheduled payments must be substantially equal and calculated on maximum 30-year amortization period;
- Cannot have a rate that increases;
- Must have a minimum 5-year term and maximum 30-year term
- Debt-to-income ratios or residual income must be considered and verified;
  - No 43% DTI requirement
  - Need not consider the balloon payment itself when determining the amount of mortgage-related payments to consider in assessing the ability to repay the loan
- No negative amortization or interest-only loans;
- Loan term must not exceed 30 years;
- Points and fees are less than 3% or other applicable cap; and
- Must be a portfolio loan.

# Ability-to-Repay / Qualified Mortgages

**Points and fees – definition and calculation:**

- Most prepaid finance charges (subject to special rules):
  - Limited number of discount points can be excluded, providing certain criteria met;
  - Government guaranty fees and monthly Private mortgage insurance excluded;
  - Qualifying upfront private mortgage insurance can be excluded on certain conditions.
- Loan originator compensation;
- Settlement charges paid to creditor or affiliate, or "unreasonable;"
- Credit-related insurance premiums;
- Maximum repayment penalty that could be charged under terms of loan; and
- Prepayment penalty actually charged to borrower if borrower refinances loan with current holder, servicer acting for current holder, and affiliate of either.

# Ability-to-Repay / Qualified Mortgages

**Prepayment Penalties**

Prepayment penalties only permitted in covered transactions if the loan is:

- A prime, fixed-rate loan, and
- Prepayment penalties are otherwise permitted by law.

When permitted, the prepayment penalty is limited to:

- The first 36 months of the loan, and
- Maximum of 2% of outstanding balance in first 2 years, and 1% in third year.

# Mortgage Loan Originator Compensation

## Effective Dates

June 1, 2013

- Provision (h) – prohibition on mandatory arbitration clauses and waivers of certain consumer rights

January 1, 2014

- All other provisions

January 10, 2014

- Provision (g) – NMLSR ID Requirements
- Provision (i) – Prohibition on financing of credit insurance (delayed from its original effective date of June 1, 2013)

# Mortgage Loan Originator Compensation

## LO Final Rule Topics Covered

1. Restrictions and clarifications on loan originator compensation.
2. Exceptions to prohibition on compensation based on profits.
3. Exemption from the Dodd-Frank Act's prohibition on consumer payment of upfront points and fees.
4. Loan originator qualification and training requirements and use of unique identifiers.
5. Prohibition on mandatory arbitration/waivers of consumer rights, and financing single-premium credit insurance.
6. Other provisions of the LO Final Rule.

# Mortgage Loan Originator Compensation

## De Minimus Exclusion to Paying Incentive Compensation

- Bank management or other staff who originate a small number of mortgages (no more than 10 transactions during the preceding 12 months) can participate in profit sharing plans without limit, even where profits are derived from mortgage origination activities
- Bank staff that routinely operate as loan originators can participate in bank profit sharing plans, so long as no more than 10% of their total compensation comes from profits generated by mortgage origination activities.

# Mortgage Loan Originator Compensation

## Scope

- LO Final Rule applies to closed-end consumer credit transactions secured by a dwelling.
  - Includes:
    - First and subordinate-lien loans
    - Reverse mortgages that are not HELOCs
  - Excludes:
    - HELOCs (except provisions (h) and (i))
    - Timeshare plans

## Definition of "Loan Originator" Revised and Expanded

- In expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities:
  - Takes an application;
  - Offers, arranges, assists a consumer with obtaining or applying to obtain, negotiate, or otherwise obtain or make an extension of consumer credit for another person; or
  - Through advertising or other means of communication represents to the public that such person can or will perform any of these activities.
- The definition may include anyone involved in the loan origination process.

# Mortgage Loan Originator Compensation

**Scenario**

- A teller provides a customer a mortgage application. The customer takes the mortgage application home and completes it.
- Has the teller become a loan originator?
- What if you provide the teller a $20 referral fee?

# Mortgage Loan Originator Compensation

## "Compensation"

- New definition under the LO Final Rule
- Includes:
  - Salaries,
  - Commissions, and
  - Any financial or similar incentive.
- Excludes:
  - Third-party services that the LO receives but does not retain;
  - Services performed by LO organization or an affiliate that are not loan origination activities; or
  - Services that are not loan originator activities where the amounts are not retained by the LO but are paid to the creditor, its affiliate, or the affiliate of the LO organization.

# Mortgage Loan Originator Compensation

## General prohibition

No compensation based on the terms of a transaction or proxy for a term of a transaction.

- Definition of “term of a transaction”

# Mortgage Loan Originator Compensation

## Term of a Transaction

- Interest
- Annual Percentage Rate (APR)
- Collateral Type
- Prepayment Penalties
- Discount Points; origination points; or fees in general

## Not based on a Term or Proxy (Permissible)

- Overall loan volume
- Long Tern performance of loans
- Hourly rate of pay for actual hours worked
- Quality of the loan originator’s files
- Compensation based on a fixed % of amount of credit extended.

# Mortgage Loan Originator Compensation

## Dual Compensation

Prohibition on Dual Compensation

- In connection with the same transaction, a loan originator cannot receive compensation from any other person if compensation is also received from the consumer.

Exception

- If a loan originator organization receives compensation from the consumer, compensation may be paid to the individual loan originator.

# Mortgage Loan Originator Compensation

## Steering

The LO Final Rule continues the existing rules concerning the steering prohibition of Section 1026.36 with a clarification to the types of options presented.

# Mortgage Loan Originator Compensation

## New Dodd-Frank Qualification Requirements

1. Imposes qualification requirements, and when applicable, registration and training, on:
   - Individual loan originators;
   - Mortgage brokers; and
   - Creditors
2. Requires the use of NMLSR unique identifier on specific loan documents.

# Mortgage Loan Originator Compensation

**Two More New Dodd-Frank Requirements**

- Prohibition on mandatory arbitration clauses and waivers of certain consumer rights.
- Prohibition on financing single-premium credit insurance.

# Mortgage Loan Originator Compensation

## Policies and Procedures for Depository Institutions

- Depository institutions must establish and maintain written policies and procedures reasonable designed to ensure compliance with:
  - Restrictions on payments to loan originators,
  - Prohibitions on steering,
  - Loan originator qualification requirements, and
  - Loan originator identifier requirements.
- Policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage credit activities.

# High-Cost Loans under HOEPA

The new rule will:

- Expand the types of mortgages potentially subject to HOEPA;
- Revise and expand the triggers; and
- Revise the ability-to-repay requirements and make other changes to restrictions on high-cost loans.
- Also implements two homeownership counseling provisions unrelated to high-cost loans.

**Effective Date: January 10, 2014**

# High-Cost Loans under HOEPA

**Types of loans subject to HOEPA:**

- •Closed-end refinancing and home-equity loans;
- •Purchase-money mortgages (NEW); and
- •HELOCs (NEW).

**Loans must be secured by the consumer's principal dwelling, and for a consumer purpose.**

# High-Cost Loans under HOEPA

**Types of loans exempt from HOEPA:**

- Loans to finance the initial construction of a dwelling;
- Loans originated and financed by Housing Finance Agencies;
- Loans originated through a U.S. Department of Agriculture Rural Housing Service program; and
- Non-recourse reverse mortgages.

# High-Cost Loans under HOEPA

**Three Independent Triggers**

A loan potentially subject to HOEPA will be subject to its special rules if it meets any **one** of three independent triggers:

- The **APR** trigger;
- The **Points and Fees** trigger; or
- The **Repayment Penalty** trigger (NEW).

# High-Cost Loans under HOEPA

**Open-end Credit Plans have two additional points and fees categories:**

- Fees payable at or before closing charged for participation in the plan; and
- Required transaction fees to make a draw on the line (assume one draw).

# High-Cost Loans under HOEPA

**Two new Counseling-Related Requirements are Unrelated to HOEPA loans**

- RESPA/Regulation X Amendment:
  - Creditors must provide list of homeownership counseling organizations within 3 business days of application.
  - List to be available through CFPB or HUD.
- TILA/Regulation Z Amendment:
  - Mandatory counseling for first-time borrowers considering loans that will or may negatively amortize.

# Mortgage Loan Servicing

**Mortgage Servicing Rules – Two Rules / Nine Topics**

- **TILA/Regulation Z**
  - Periodic Statements
  - Interest rate adjustment notices for ARMs
  - Prompt crediting of payments and payoff statements
- **RESPA/Regulation X**
  - Force-placed insurance
  - Error resolution and information requests
  - General servicing policies, procedures, and requirements
  - Early intervention with delinquent borrowers
  - Continuity of contact with delinquent borrowers
  - Loss mitigation procedures

# Mortgage Loan Servicing

**Small Servicer Exemption**

- Servicer that services $\leq$ 5,000 mortgage loans, for all of which the servicer (or affiliate) is the creditor or assignee; or
- Servicer is a Housing Finance Agency as defined by HUD regulations

**Small Servicer Determination**

- Made as of January 1 of each year
- A servicer that crosses the $\leq$ 5,000 threshold, has 6 months or until the next January 1 (whichever is later) to comply with any requirements for which the servicer is no longer exempt as a small servicer.

# Mortgage Loan Servicing

**Small Servicer Exemptions**

- **Regulation Z**
    - Periodic Statements

- **Regulation X**
    - General servicing policies, procedures, and requirements
    - Early intervention with delinquent borrowers
    - Continuity of contact with delinquent borrowers
    - Loss mitigation procedures (other than dual tracking limitations)

- **Master Servicer/sub-servicer Arrangements**
    - Both master servicer and sub-servicer must meet the requirements of a small servicer to qualify for exemption

# Mortgage Loan Servicing
# All Servicers

**Initial Interest Rate Adjustment Disclosure for ARMs**

Scope

- Closed-end consumer credit transactions secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation
- Creditor, assignee, or servicer of any ARM

Exemptions

- ARMs with a term of one year or less; and
- Loan modifications made for loss mitigations purposes (with exception)

Requirements

- Disclosure must be in a separate document: if mailed, can be with other documents; if emailed must be a separate document
- Must meet content, timing, and format requirements

# Mortgage Loan Servicing
# All Servicers

**Change in Payment Disclosure for ARMs**

Scope

- Closed-end consumer credit transactions secured by the consumer's principal dwelling in which the annual percentage rate may increase after consummation
- Creditor, assignee, or servicer in any form – includes financial and non-financial institutions
- Disclosure is required for a change in payment resulting form an ARM conversion to a fixed-rate transaction

Exemptions

- ARMs with terms of one year or less
- The first interest rate adjustment to an ARM, if:
    - First payment at adjusted level due within 210 days after consummation; and
    - The new interest rate disclosed at consummation was not an estimate
- Loan modifications made for loss mitigation purposes (with exception)

# Mortgage Loan Servicing
# All Servicers

**Prompt Crediting of Payments**

Periodic Payment

- Definition: “amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle”
- Must be credited as of the date of receipt, except when delay does not result in negative consequences for borrower
- Method of crediting based on legal obligation of parties

Partial Payment

- Definition: “any payment less than a periodic payment”
- Upon receipt of a partial payment, the servicer must, either:
  - Credit partial payment upon receipt;
  - Return the partial payment to the consumer; or
  - Hold the payment in a suspense or unapplied funds account
- Servicer not required to retain partial payments in suspense or unapplied funds account

# Mortgage Loan Servicing
# All Servicers

**Pyramiding of Late Fees**

- Makes no substantive changed to the existing prohibition on pyramiding of late fees, but re-designates the provision to 1026.36(c)(2)
- Requirements
  - A servicer, in connection with a consumer credit transaction secured by a consumers principal dwelling, may not impose any late fee or delinquency charge if:
    - The fee or charge is solely attributable to non-payment of a late fee or delinquency charge on an earlier payment; and
    - The payment is otherwise a periodic payment received on the due date or within any applicable courtesy period

# Mortgage Loan Servicing
# All Servicers

**Force-placed Insurance**

- Defined in Regulation X as “hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan”

Types of Insurance Not Considered Force-Placed Insurance

- Hazard insurance required by Flood Disaster Protection Act of 1973
- Certain policy renewals by servicer

# Mortgage Loan Servicing
# All Servicers

## Requirements

- Servicer must have a reasonable basis to obtain force-placed insurance before charging borrower; and
- Must have provided written notices to borrower in advance and in compliance with the timeframes provided for in the rule

## Notice Requirements

- First notice
- Reminder notice

## Renewals

- Servicer must meet notice requirements before charging borrower
- Notice requires similar information required in first notice, with a statements explaining servicer's intent to continue force placement.

## Cancellation

- Servicer must cancel force-placed insurance upon proof of borrower's hazard insurance coverage
- Must refund to borrower any premium and related fees for overlapping coverage

# Mortgage Loan Servicing
# All Servicers

**Escrow Account – Restrictions**

- Servicer may purchase insurance only if "unable to disburse funds" from borrower's escrow account
  - Unable to disburse fund: reasonable basis to believe hazard insurance has been cancelled or not renewed for reasons other than non-payment of insurance premiums or vacant property
  - Insufficient funds in the escrow account does not mean a servicer is unable to disperse funds
- Servicer may seek repayment from borrower for funds advanced

**Force-place Insurance – Small Servicer Exemption**

Special rule exempts a servicer that qualifies as a small servicer if:

- Cost of force placed insurance to the borrower is less than the amount the small servicer would need to disburse from escrow account to ensure timely payment of the borrower's hazard insurance premiums.

# Mortgage Loan Servicing
# All Servicers

**Error Resolution/Information Request**

Timing

- Acknowledgement of receipt of notice of error required within 5 days*
- Response required within 30 days* with possible 15 day* extension
    - Similar timeframes apply to requests for information

Types of Errors

- Servicer required to comply with error resolution procedures for ten specific types of errors and any other type of error related to servicing of a borrower's mortgage loan.

Requirements

- Must provide contact information for the borrowers to assert errors
- May designate a specific address for submission
- Requirements of error notices/information requests do not apply to a borrower's oral requests.

*Excluding legal public holidays, Saturdays, and Sundays

# Mortgage Loan Servicing
# All Servicers

**Loss Mitigation Procedures**

**Small servicer dual tracking limitations:**

- May not make first notice or filing requires for foreclosure unless borrower is more than 120 days delinquent; and
- May not proceed to foreclosure judgment or order of sale, or conduct a foreclosure sale, if the borrower is performing under loss mitigation agreement

# Mortgage Loan Servicing
# All Servicers

**Refund of Escrow Balance**

"A servicer shall return to the borrower any amounts remaining in an escrow account that is within the servicer's control"

**Requirements**

- Servicer must return to the borrower any amount in escrow within the servicer's control within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment in full of a mortgage loan

**If the borrower consents, the service may credit funds to an escrow account for a new mortgage loan if:**

- The lender was also the lender to whom the prior mortgage was initially payable;
- The lender is the owner or assignee of the prior mortgage; or
- The lender uses the same servicer of the prior mortgage loan as the servicer of the new loan

Questions?

Thank you!