HUD Final Rule: Qualified Mortgage

Overview Briefing Session
December 18, 2013
Overview

- On December 11, 2013, the Department of Housing and Urban Development published its Final Rule in the Federal Register, *Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages*

- The effective date is **January 10, 2014**. All loans, with case numbers assigned on or after that date, and which HUD insures or guarantees, will be a Qualified Mortgage, with a few exceptions noted at the end of this presentation.

- The rule corresponds with HUD’s charge to balance its statutory mission with the requirement in the *Truth in Lending Act* (TILA) as amended by the *Dodd-Frank Wall Street Reform and Consumer Protection Act* that prohibits lenders from making mortgage loans unless the lender makes a good faith determination of ability to repay.
Definition of HUD Qualified Mortgage
HUD Qualified Mortgage

• On or after the effective date of **January 10, 2014**, to be a Qualified Mortgage, all non-manufactured housing Title II loans must:

  ➢ Have periodic payments

  ➢ Have terms not to exceed 30 years

  ➢ Not have points and fees greater than 3% of the original UPB for most loans (3% is consistent across the market, including GSE mortgages)
    ▪ Loans with UPBs under $100,000 are given more flexibility

  ➢ Be insured or guaranteed by HUD
HUD Qualified Mortgage

- HUD Qualified Mortgages fall into two categories, Rebuttable Presumption and Safe Harbor, with these category definitions based on the relation of the loan’s Annual Percentage Rate (APR) to the Average Prime Offer Rate (APOR) at the time interest rate is set.

- Home Equity Conversion Mortgages are excluded (exempt from ability-to-repay requirements); the Final Rule provides other product/program exclusions and conditions.
Qualified Mortgage – Two Categories

• **Rebuttable Presumption:** Mortgage does not exceed limits on upfront points and fees; has an annual percentage rate (APR) that *exceeds* the average prime offer rate (APOR) as of the date the interest rate is set plus 115 basis points plus the annual ongoing Mortgage Insurance Premium (MIP) for a first-lien mortgage. Legally, lenders that offer these loans are presumed to have determined that the borrower met the ability to repay standard.

• **Safe Harbor Qualified Mortgage:** Mortgage does not exceed limits on upfront points and fees; has an APR for a first lien mortgage that is *equal to or less than* the APOR plus 115 basis points plus ongoing annual MIP. Offers lenders the greatest legal certainty that they are complying with the Ability-to-Repay standard.
Qualified Mortgage – Rebuttable Presumption

• Presumed to comply with TILA ability-to-repay requirements

• Allows borrower to bring a claim that lender did not make reasonable/good faith ability-to-repay determination

• Rebuttal of presumption compliance must show that the mortgagee did not make a good faith determination of ability to repay when underwriting according to HUD requirements
Qualified Mortgage – Safe Harbor

- Conclusively presumed to comply with TILA ability-to-repay requirements
- Meeting Qualified Mortgage criteria and underwriting requirements are sufficient to ensure mortgagee made reasonable and good faith effort to determine ability to repay
- Borrower can still legally challenge mortgagee if they believe loan does not meet HUD definition of Safe Harbor Qualified Mortgage (e.g., points and fees exceeded 3%)
Exemptions

• The following programs are exempted from the up-front point and fee limit and are deemed Safe Harbor Qualified Mortgages:
  ➢ Title I Loans
  ➢ Title II Manufactured Housing Loans
  ➢ Section 184 Indian Housing Loan Guarantee Program
  ➢ Section 184A Native Hawaiian Housing Loans

• They represent a special subset of HUD products and require additional study to determine future changes, if any

• No change now to avoid interference with current lending practice
Additional Exemptions

The following additional products and programs are exempt from the HUD Qualified Mortgage rule because their requirements are deemed to satisfy the Ability-to-Repay standard:

- Construction-to-Permanent loans for 12-months or less for the construction phase
- Extension of credit by a Housing Finance Agency
- Extension of credit by Community Development Financial Institutions
- Extension of credit through a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008
- Down payment assistance through a secondary financing provider, when made in accordance with HUD regulations
- Community Housing Development Organization, provided the creditor has entered into a commitment with a participating jurisdiction and is undertaking a project under the HOME program
- 501(c)(3) organization that secured no more than 200 dwellings in the prior calendar year and to consumers with income that did not exceed the low- and moderate-income household limit, and the creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit
Considerations for Mortgagees
Mortgagee Considerations

- Safe Harbor provides greatest legal certainty for mortgagees because borrower in default can only challenge ability to repay standard was not met because points and fees requirement was violated

- Rebuttable Presumption means a borrower could claim the ability to repay standard was not met either because the points and fees limit was exceeded or because the creditor failed to follow HUD underwriting requirements

- For both categories, documentation of the borrower’s ability to repay will be important in demonstrating compliance with ability-to-repay requirements
Next Steps for FHA

• Effective for case numbers assigned on and after January 10, 2014

Questions?