

Lenders Compliance Group

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GSEs: Ability-to-Repay and Qualified Mortgages

Yesterday, the Federal Housing Finance Agency (FHFA) announced that it is directing Fannie Mae ("Fannie") and Freddie Mac ("Freddie") to limit their future mortgage acquisitions to loans that meet the requirements for a qualified mortgage ("qualified mortgage" or "QM"), including those that meet the special or temporary qualified mortgage definition, and loans that are exempt from the "ability to repay" ("ATR") requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

In January, the Consumer Financial Protection Bureau (CFPB) issued a final rule implementing the "ability to repay" provisions of Dodd-Frank, including certain protections from liability for loans that meet the criteria of a qualified mortgage as outlined in the rule.

We have discussed the ability to repay provisions [HERE](#), [HERE](#), [HERE](#), [HERE](#), and [HERE](#).

I would like to call your attention to a few important details.*

IN THIS ARTICLE

[Overview](#)

[Eligible for Sale to Fannie and Freddie](#)

[Additional Guidance and Notifications](#)

Overview

Considered historically, the Consumer Financial Protection Bureau (CFPB) issued a final rule on January 10, 2013, implementing the "ability to repay" provisions of the Dodd-Frank. That rule generally requires lenders to make a reasonable, good faith determination of a consumer's ability to repay before originating a mortgage loan and establishes certain protections from liability for QMs.

The ATR rule takes effect for applications dated on or after January 10, 2014.

It is significant that, beginning January 10, 2014, Fannie and Freddie will no longer purchase a loan that is subject to the ATR rule if the loan:

- is not fully amortizing,
- has a term of longer than 30 years, or
- includes points and fees in excess of three percent of the total loan amount, or such other limits for low balance loans as set forth in the rule.

The FHFA announcement states that "effectively, this means Fannie and Freddie will not purchase interest-only loans, loans with 40-year terms, or those with points and fees exceeding the thresholds established by the rule."

Fannie and Freddie will continue to purchase loans that meet the underwriting and delivery eligibility requirements stated in their respective selling guides. This includes loans that are processed through their automated underwriting systems and loans with a debt-to-income ratio of greater than 43 percent. But loans with a debt-to-income ratio of more than 43 percent are not eligible for protection as QMs under the CFPB's final rule unless they are eligible for purchase by Fannie and Freddie under the special or temporary qualified mortgage definition.

Eligible for Sale to Fannie and Freddie

Just a few days ago, on May 2, 2013, the FHFA directed Fannie Mae and Freddie Mac to limit future acquisitions to loans that:

- are qualified mortgages under the ability to repay rule, including those meeting the special or temporary qualified mortgage requirements; or
- are exempt from the ability to repay requirements, such as investor transactions.

Blog Archive

▼ 2013 (11)

▼ May 2013 (1)

[GSEs: Ability-to-Repay and Qualified Mortgages](#)

▶ April 2013 (4)

▶ March 2013 (1)

▶ February 2013 (2)

▶ January 2013 (3)

▶ 2012 (41)

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Thus, effective for mortgages with application dates on or after January 10, 2014, Fannie and Freddie will not be allowed to purchase any loans if they are subject to the ATR requirements and are either:

- loans that are not fully amortizing (e.g., no negative amortization or interest-only loans);
- loans with terms in excess of 30 years (e.g., no 40-year terms); or
- loans with points and fees in excess of 3% of the total loan amount or such other limits for low balance loans as set forth in the ability to repay final rule.

Fannie will continue to purchase loans that meet the underwriting and delivery eligibility requirements (i.e., existing debt-to-income ratios, loan-to-value ratios, and reserves) stated in the Selling Guide, including loans processed through Desktop Underwriter®.

Freddie will limit future purchases to:

- Mortgages that are "qualified mortgages" under the final rule, including those meeting the special or temporary qualified mortgage requirements, and
- Mortgages that are exempt from the ATR, such as investor transactions.

Therefore, effective for mortgages subject to the final rule with applications received on or after January 10, 2014, Freddie will not be permitted to purchase the following:

- Mortgages that are not fully amortizing (e.g., Mortgages with a potential for negative amortizations or interest-only Mortgages);
- Mortgages with terms in excess of 30 years (i.e., 40-year fixed-rate Mortgages); and,
- Mortgages with points and fees in excess of 3% of the total loan amount or such other limits for low balance Mortgages as set forth in the final rule.

Freddie will continue to purchase mortgages that meet existing Single-Family Seller/Service Guide underwriting and delivery eligibility requirements (i.e., debt-to-income ratio, loan-to-value ratio and reserve requirements), provided they do not fall into the three categories listed above. This includes mortgages that are evaluated through Loan Prospector®.

Additional Guidance and Notifications

Fannie:

Fannie has stated that it currently intends to continue purchasing Refi Plus™ and DU Refi Plus™ loans and loans sold under written variances to the Selling Guide.

However, the CFPB has not yet issued a final rule regarding these items. Precisely whether and how these purchases will be affected will depend on the final rule.

For loans with application dates on or after January 10, 2014, Fannie will rely upon lender selling representations and warranties that the loans are QMs.

Freddie:

Freddie has stated that it currently intend to continue purchasing Freddie Mac Relief Refinance Mortgages^(SM) and Mortgages sold under written negotiated terms and exceptions to the Guide; however, the CFPB has not yet issued a final determination regarding these items.

Whether and how these purchases will be affected in the future will depend on that final determination.

For mortgages with applications received on or after January 10, 2014, Freddie will rely on selling representations and warranties that the mortgage is a QM.

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