Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)

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General Rule – Creditor shall not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation based upon "verified and documented information" that the consumer will have a reasonable ability to repay the loan according to its terms.

$200,000 @ 4.5%

Origination Fee	2%	$4,000
3yr. Finance Charge		$26,000
Actual Damages (down payment)		$20,000
Attorney Fees		$50,000
Total Damages		**$100,000**

Covered Loans – Loan secured by a dwelling – residential structure containing 1-4 units (includes condo, co-op, mobile home, trailer, if used as a residence).

Excluded – HELOCS, timeshares, reverse mortgages, modifications, bridge loan 12 months or less, construction loan of 12 months or less.

Satisfying the General Rule 5 Ways

1) QM – Special Rule (agency)

2) QM – General Rule

3) "Running Naked" – You Prove Reasonable and Good Faith Determination of "Ability to Repay"

4) Refinance a Non-Standard into a Standard Mortgage

5) Small Creditor Rural Qualify Balloon

Safe Harbor vs. Presumption Compliance vs. Preponderance of the Evidence

1. QM - “Safe Harbor” for transactions that are not Section 35 loans.

2. QM - “Presumption of Compliance” for Section 35 loans.

3. “Running Naked”

Qualified Mortgage Loan – Special Rule

(expires June 10, 2021)

Meets three requirements:

a) Substantially equal payments

b) Term not to exceed 30 years

c) Points and fees, known at or before consummation, do not exceed 3% of <u>total loan amount</u> on loans greater than or equal to $100,000

And meets one or more of the following:

a) FNMA / FHLMC eligible

b) Eligible for FHA insurance

c) Eligible for VA Guarantee

d) Eligible for Department of Agriculture Guarantee

Qualified Mortgage – General Rule

1. Substantially equal periodic payments
2. Loan term does not exceed 30 years
3. Points and fees do not exceed 3% of total loan amount on loans greater than or equal to $100,000

4. For which creditor underwrites the loan taking into account monthly payments for mortgage related obligations using:

   a) maximum interest rate that may apply during first 5 years

   b) periodic payments over loan term (based upon maximum rate during first 5 years)

5. For which the creditor verifies at or before consummation

   a) current or reasonable expected income or assets (other than the value of dwelling)

   b) current debt obligations, alimony and child support

6. For which total debt to income does not exceed 43% - (Appendix Q)

"Running Naked" The General Ability to Repay (ATR) Requirements

– The Eight Factors to *Consider*

1) Current or reasonably expected income or assets (other than the value of the collateral).

2) If the creditor relies on income from the consumer’s employment, then the consumer’s current employment status.

3) The monthly payment on the loan.

4) The monthly payment on any “simultaneous loan” that the creditor “knows or has reason to know” will be made.

5) Monthly payment for “mortgage-related obligations.”

6) Current debt obligations, alimony and child support.

7) Monthly debt-to-income ratio (DTI) or residual income.

8) Credit history.

Points and Fees

Formula

TOTAL Loan Amount x Percentage ≥

(a)	+	Non Interest Finance Charges under 1026.4(a) + (b)
(b)	+	1026.4(c) charges where lender, broker or affiliate retains a portion of the fee
(c)	-	any bona fide third party charges not retained by creditor (unless expressly included)
(d)	+	any excess discount points
(e)	+	all compensation paid to a loan originator other than the employee of a creditor that can be attributed to the transaction
(f)	+	prepayment penalty

For QM Loans – Points and Fees Payable in connection with the loan cannot exceed specified amounts as a percentage of the "Total Loan Amount."

Total Loan Amount =

Amount Financed (Principal Amount)

- Prepaid Finance Charges

- Other charges Paid to Creditor/Affiliate and Financed

- Optional Credit Insurance Paid at or Before Closing

(A)

"Points and Fees" Generally includes all non-interest Finance Charges under 1026.4(a) (b) with specific exceptions

Includes:

- All Broker Fees
- Points, Loan Fees, Assumption Fees, Finder's Fees

5 Exceptions

Federal or State Insurance or Guarantee Fees

MI payable after consummation

A portion of up-front MI if automatically refundable not to exceed amount allowed under FHA.

Unretained 3rd party fees – (if not expressly included)

Certain “Discount Points” on lower interest loans

(B)

Exclude 1026.4(c)(7) items if reasonable and creditor or affiliate of creditor receives no direct or indirect compensation.

- Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.
- Fees for preparing loan-related documents.
- Notary and credit-report fees.
- Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.
- Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(C)

Excludes any bona-fide third party fee not retained by creditor, loan originator or an affiliate of either.

(not expressly included)

(D)

Excludes up to two (2) bona-fide discount points – if interest-rate does not exceed APOR by more than 1%.

Excludes up to one (1) bona-fide discount points – if interest-rate does not exceed APOR by more than 2%.

(E)

Includes all compensation paid directly or indirectly by a consumer or creditor to a loan originator other than an employee of the creditor that can be attributed to the transaction at the time the interest rate is set.

(F)

Includes the maximum prepayment penalties (or total prepayment penalty if borrower refinances with holder, servicer or an affiliate of either).

Prepayment Penalties

1. APR cannot increase after consummation
2. Not higher priced loan (not Section 35)
3. Must not apply after 3 years
4. Must not exceed 2% during first 2 years and 1% during third year
5. Creditor must offer the consumer an alternative covered transaction without prepayment penalty

Current Example

Loan Amount:		$250,000.00		
Rate:		3.250%		
Broker:	3%	$7,500.00		
Lender Fee:		$875.00		
Doc Prep:		$125.00		
Appraisal:		$375.00		
Credit:		$27.00		
Title:		$650.00		
Recording:		$140.00		

Assume	Loan Officer Comp	1%
Total:	Prepaid Finance Charge:	$3,622.95
Amount Financed:	$246,377.05	
3% = $7,391.31		

No Affiliates

Total Allowable: 3% x $246,377.05 = $7,391.31

	$7,391.31
Broker:	$7,500.00
Lender:	$875.00
Loan Officer:	<u>$2,500.00</u>
- over by	$3,483.69

W/out DC over by $983.69

Affiliated Title Company and In House Appraisal (Title and Appraisal Financed)

	$246,377.05	Amount Financed				
	- 650.00	Affiliated Title Fees				
	- 375.00	In House Appraiser				
Total Loan Amount:	$245,352.05	x	3%	=	$7,360.56	

	$7,360.56
Broker:	- $7,500.00
Lender:	- $875.00
L.O.:	- $2,500.00
Title:	- $650.00
Appraisal:	- $375.00
Over by:	$4,539.44

W/out DC over by $2,039.44

Questions to Consider

- Will your company make Section 35 loans?
- Will your company make anything other than QM?
- A Broker's playing on a level playing field?
- Should you change loan officer's compensation to salary plus "Quality of Loans" bonus?
- Should you dump your affiliated title company?
- Should you let your in house appraiser go?
- Should you be greeting at Walmart?