

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: March 2014 **NO.:** 14-RA-09

TO: Federally Insured Credit Unions

SUBJECT: Updated Ability-To-Repay and Qualified Mortgage Requirements from the Consumer Financial Protection Bureau (CFPB)

ENCL: (1) Updated [Ability-To-Repay & Qualified Mortgage Rule Small Entity Compliance Guide](#)
(2) [General Comparison Chart of Ability-to-Repay Requirements with Qualified Mortgages](#)
(3) [Small Creditor Qualified Mortgages Flowchart](#)

This Regulatory Alert supersedes and replaces Regulatory Alert 14-RA-01 (January 2014), to clarify the points and fees limit for each loan amount threshold and types of charges included in the calculation. This Regulatory Alert also references updated guidance for implementing the requirements of the rule.

Dear Board of Directors and Chief Executive Officer:

If your credit union makes closed-end consumer loans secured by a dwelling, you must comply with CFPB's Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule. **The rule requires you to assess a member's ability to repay for virtually all closed-end residential mortgage loans secured by the member's dwelling and provides your credit union with certain protections from legal liability for compliance with the rule.**

Before the effective date of January 10, 2014, NCUA issued a [Supervisory Letter](#)¹ to provide instructions for examiners and compliance guidance for credit unions in the first year of examinations under the new rule.

After NCUA issued the Supervisory Letter, CFPB updated its Small Entity Compliance Guide. As a result, the links and guidance in this alert reflect the latest changes affecting credit unions.

¹ SL No. 14-01 (January 3, 2014), enclosed in Letter to Credit Unions 14-CU-01.

Background

Prior to the ATR/QM rule, Regulation Z, which implements the Truth in Lending Act (TILA), prohibited a creditor from making a higher-priced mortgage loan without regard to the member's ability to repay the loan. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA to adopt similar Ability-to-Repay (ATR) requirements for virtually all closed-end mortgage loans. The Dodd-Frank Act also provides a presumption of compliance with ATR requirements and protections from legal liability for a certain category of mortgages, called Qualified Mortgages (QMs).

CFPB adopted a rule to implement the Dodd-Frank Act ATR/QM provisions.² The rule also implements other Dodd-Frank Act provisions **requiring you to retain records for a minimum of three years** after consummation to demonstrate you complied with the ATR/QM rule and restrictions on prepayment penalties for QM loans.³

Your credit union should be able to leverage existing policies and practices for determining a member's ability to repay a loan to comply with the ATR/QM rule. In fact, under Part 701 of NCUA's Rules and Regulations, federal credit unions are required to develop and maintain certain minimum underwriting standards. Likewise, most federally insured state-chartered credit unions typically operate under similar state laws requiring an appropriate level of safe and sound underwriting practices.

While the ATR/QM rule mandates a broader set of underwriting criteria than those required under Part 701 of NCUA's regulations, the ATR/QM rule's requirements do not contradict Part 701's underwriting requirements. As such, **compliance with the ATR requirements in Regulation Z also meet the underwriting criteria in Part 701.** However, simply meeting the underwriting criteria in Part 701 is not sufficient for compliance with the ATR/QM rule requirements.

Regulatory Tip: The ATR/QM rule is not limited to first liens or to loans on primary residences.

Which Loans are Covered by the Rule?

The ATR/QM rule applies to almost all closed-end consumer credit transactions secured by a dwelling, including any real property attached to the dwelling.⁴ In other words, the rule applies to loans made to members secured by residential structures that contain one to four units, including an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.

² 78 FR 6407 (Jan. 30, 2013); 78 FR 35429 (June 12, 2013); 78 FR 44685 (July 24, 2013); 78 FR 45842 (July 30, 2013); 78 FR 60381 (Oct. 1, 2013).

³ Federal credit unions are prohibited from charging prepayment penalties on any loan. 12 U.S.C. § 1757(5)(A)(viii).

⁴ 15 U.S.C. § 1639c; 12 CFR § 1026.43.

The rule does *not* apply to:

- Open-end credit plans (such as home equity lines of credit, or HELOCs);
- Time-share plans;
- Reverse mortgages;
- Temporary or bridge loans with terms of 12 months or less (with possible renewal);
- A construction phase of 12 months or less (with possible renewal) of a construction-to-permanent loan;
- Consumer credit transactions secured by vacant land; and
- Loan modifications (as opposed to certain types of refinancings).⁵

Also, in cases where you refinance homeowners from a non-standard (risky-featured) loan to a standard loan, the rule provides an *exemption* from the ATR requirements for the refinanced loan if certain conditions are met.⁶ This option only applies to mortgages that you continue to hold or service. You can use this option only when, among other things, the payments under the refinance will not cause the member's principal balance to increase, the member's monthly payment will materially decrease (by at least 10 percent), and the new loan term does not have deferred principal, negative amortization, or balloon payments.

In addition, loans by certain types of creditors or under certain loan programs are *exempt* from the rule's ATR requirements:

- U. S. Department of Treasury designated Community Development Financial Institutions;
- U. S. Department of Housing and Urban Development (HUD) designated Community Housing Development Organizations;
- HUD-designated Down Payment Assistance Providers of secondary financing;
- Nonprofit organizations under section 501(c)(3) of the Internal Revenue Code that extend credit no more than 200 times annually, provide credit only to low-to-moderate income consumers, and follow their own written procedures to determine consumers have a reasonable ability to repay their loans;⁷
- Loans made by housing finance agencies directly to consumers;
- Loans made by other creditors under a program administered by a housing finance agency; and
- Loans made under an Emergency Economic Stabilization Act Program (such as loans made under a State Hardest Hit Fund Program).⁸

⁵ 12 CFR § 1026.43(a)(1)-(3)(ii). TILA applies to a loan modification only if it is considered a refinancing under Regulation Z. Therefore, if a loan modification is not subject to TILA, it is not subject to the ATR/QM rule. The rules for determining whether a loan workout is a modification or refinance are found in Regulation Z at 12 CFR § 1026.20(a).

⁶ 12 CFR § 1026.43(d).

⁷ 12 CFR § 1026.43(a)(3)(v).

⁸ 12 CFR § 1026.43(a)(3)(iv) and (vi).

The exemption applies to all loans made by the above creditors or under the above loan programs, provided the conditions for the exempted creditor or loan program are satisfied. An exempt loan remains exempt even if it is sold, assigned, or otherwise transferred to a creditor that would not qualify for the exemption.⁹

What are the Basic Ability-to-Repay Requirements?

The ATR/QM rule requires you to make a reasonable, good-faith determination that a member has the ability to repay a covered mortgage loan before or when you consummate the loan. You must consider, at a minimum, eight specific underwriting standards when making an ATR determination. In addition, you must verify the information you rely on to make the ATR determination. As stated earlier in this Regulatory Alert, you must also retain evidence you complied with the ATR/QM rule for a minimum of three years after consummation.

Eight ATR Underwriting Factors

You must consider the following eight underwriting standards when making an ATR determination:¹⁰

1. Current or reasonably expected income or assets (other than the value of the property securing the loan), which the member will rely on to repay the loan;
2. Current employment status (if you rely upon employment income when assessing a member's ability to repay the loan);
3. Monthly mortgage payment for the covered mortgage loan (calculated using the introductory or fully indexed interest rate, whichever is higher, and based on monthly, fully amortizing payments that are substantially equal);
4. Monthly payments on simultaneous loans secured by the same property;
5. Monthly payments for property taxes and insurance you require the member to buy, and other costs related to the property such as homeowners association fees or ground rent;
6. Debts, alimony, and child support obligations;
7. Monthly debt-to-income ratio or residual income (calculated using the total of all of the mortgage and non-mortgage obligations listed above, as a ratio of gross monthly income); and
8. Credit history.

Regulatory Tip: The ATR/QM rule does not preclude you from considering additional factors, but you must consider at least the eight factors listed here.

⁹ Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 3.XIII, p. 27 (Jan. 8, 2014).

¹⁰ 12 CFR § 1026.43(c)(2).

In addition, both the rule and the updated CFPB Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide provide guidance and examples of appropriate methods to calculate, consider, and confirm each of the above eight underwriting factors.¹¹

Other ATR Considerations

You are responsible for developing and applying underwriting standards for your credit union and making changes to those standards over time in response to empirical information and changing economic and other conditions.¹² You must consider the ATR requirements in the context of the facts and circumstances relevant to your market, field of membership, your credit union, and your members. The reasonableness and good faith of your ATR determination depends on the facts and circumstances relevant to a particular loan. If the records you review indicate there will be a change in a member's repayment ability after consummation (such as plans to retire and not obtain new employment, or plans to transition from full-time to part-time work), you must consider that information. However, you may not make inquiries or verifications prohibited by Regulation B (Equal Credit Opportunity Act).¹³

The ATR requirement does not ban any particular loan features or transaction types. However, you may not make a covered loan to a member if you do not make a reasonable, good-faith determination that the member has the ability to repay the loan. So, **if you underwrite loans with nontraditional features, such as interest-only or negative-amortization periods, you must consider a member's ability to repay the loan after the initial period.** For higher-priced balloon loans that do not meet the requirements of a balloon-payment QM (discussed later in this Regulatory Alert), you need to underwrite the balloon payment itself.

Verifying ATR Information

You must verify the information you rely on to make the ATR determination using reasonably reliable third-party records.¹⁴ For example, you must verify a member's income using documents such as W-2s or payroll statements. You might have to rely on member-supplied income documents. These records are reasonably reliable third-party records to the extent an appropriate third party has reviewed them.¹⁵

If your credit union does *not* currently verify any of the eight ATR underwriting factors, you must create or augment your verification, quality control, and compliance systems accordingly.

¹¹ 12 CFR Part 1026, Supplement I, Comment 1026.43(c) (Official Interpretations); Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 3.V (Jan. 8, 2014).

¹² Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 3.V (Jan. 8, 2014).

¹³ 15 U.S.C. § 1691; 12 CFR Part 1002. The Equal Credit Opportunity Act and Regulation B prohibit creditors from discriminating on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised rights under consumer credit protection laws, including TILA.

¹⁴ 12 CFR § 1026.43(c)(3).

¹⁵ The rule provides for a wide variety of sources to help you verify the information you rely on to determine ATR. See 12 CFR Part 1026, Supplement I, Comment 1026.43(c)(3) and Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 3.III (Jan. 8, 2014).

Records Retention and Compliance with ATR Requirements

You must retain evidence you complied with the ATR/QM rule for a minimum of three years after consummation.¹⁶ Although you are not required to retain actual paper copies of the documentation used in underwriting a loan, you must be able to reproduce such records accurately.

Your compliance with the ATR requirements is based on the information available during origination of a covered mortgage loan.¹⁷ It is not a violation of the ATR requirements if a member cannot repay a covered mortgage loan solely because of a sudden and unexpected job loss after you originated the loan. The ATR determination applies to information known at or before consummation.

In addition, the rule provides that a member can bring a legal action against a credit union under TILA for non-compliance with the ATR requirements.¹⁸ As such, **if members have trouble repaying covered loans you originate, they could claim you failed to make a reasonable, good-faith determination of their ability to repay before you made the loan.** If a member proves this claim in court, you could be liable for, among other things, up to three years of finance charges and fees the member paid, as well as the member's legal fees. There is a three-year statute of limitations on ATR claims brought as affirmative cases (direct claims against a creditor for damages for an ATR violation). After three years, members may bring ATR claims only as a defense to foreclosure as part of setoff or recoupment claims.

How do Qualified Mortgages Provide a Safe Harbor?

The ATR/QM rule provides a legal presumption that creditors originating QMs have complied with ATR requirements. This presumption gives you more certainty about potential legal liability if a member claims in court you failed to meet the ATR requirements in making the loan.

In addition, the QM provisions protect members from unduly risky mortgages by prohibiting certain features such as negative amortization and interest-only periods, and loan terms longer than 30 years. Also, for all types of QMs, the points and fees may not exceed the rule's specified points-and-fees caps.

¹⁶ 12 CFR § 1026.25(c)(3).

¹⁷ 12 CFR § 1026.43(c); Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 3.XII (Jan. 8, 2014).

¹⁸ 15 U.S.C. § 1640.

What Are the Different Types of QMs?

There are four types of QMs – General, Temporary, Small Creditor, and Balloon-Payment.¹⁹ Of the four types of QMs, two types – General and Temporary QMs – can be originated by all creditors. The other two types – Small Creditor and Balloon-Payment QMs – can only be originated by *small* creditors. Most credit unions meet the two criteria necessary to qualify as small creditors.

To be eligible to originate a Small Creditor QM, your credit union must have:

1) Maintained assets below \$2 billion at the end of the last calendar year;²⁰ and

2) Originated no more than 500 first-lien closed-end residential mortgages (including mortgages originated by any affiliates of your credit union) that are subject to ATR requirements in the preceding calendar year.

To determine if your credit union meets the asset size requirement, count only your assets, not your affiliate's. An affiliate is defined as any company that controls your credit union, is controlled by your credit union, or is under common control with your credit union.²¹ For example, a credit union service organization (CUSO) that is owned by a credit union is considered an affiliate.

To determine if you meet the number of originations requirement, count all first-lien, closed-end mortgages made by your credit union *and made by your affiliate(s)* that are subject to ATR requirements.²²

If your credit union meets the two criteria to qualify as a *small creditor*, you and/or your affiliate(s) can originate *all four* of the following types of QMs.

If your credit union does *not* qualify as a small creditor, you and/or your affiliates can originate the *first two* types of QMs:

1) General QM: The first type of QM is a broad category intended for all creditors.²³

In addition to the requirements that apply to all four types of QMs – no negative amortization, no interest-only payments, no loan terms in excess of 30 years, and limitations on points and fees – General QMs may not have balloon payment features.

¹⁹ 12 CFR § 1026.43(e) and (f).

²⁰ The small creditor asset threshold will be adjusted annually for inflation by CFPB.

²¹ 12 CFR § 1026.32(b)(5).

²² In making the number of originations determination do not count subordinate-lien mortgages and mortgages that are not subject to the ATR/QM rule, such as HELOCs, time-share plans, reverse mortgages, or temporary or bridge loans with terms of 12 months or less.

²³ 12 CFR § 1026.43(e)(2).

Also, in order for the loan to be a General QM, you must:

- Underwrite based on a fully amortizing schedule using the maximum rate permitted during the first five years after the date of the first periodic payment;
- Consider and verify the member's income or assets, current debt obligations, alimony, and child-support obligations; and
- Determine the member's total monthly debt-to-income ratio (DTI) is no more than 43 percent.²⁴

Regulatory Tip: Even if a loan is *not* a QM, it can still be an appropriate loan. You can originate *any* mortgage, whether or not it is a QM, as long as you comply with the ATR requirements.

You can continue to rely on sound, tested underwriting guidelines to make loans that have generally performed well, as long as you document the information you consider.

2) Temporary QM: The second type of QMs are certain loans originated during a transitional period that are eligible for purchase or guarantee by Fannie Mae or Freddie Mac, or for insurance or guarantee by certain federal agencies.²⁵

Loans receiving this temporary QM status will retain this status after the temporary provision expires, but any new loans after the expiration date will not receive temporary QM status. So, after the expiration of the temporary provision, these loans must meet the requirements for one of the other three categories of QMs to be considered a QM loan.

For loans eligible for purchase or guarantee by the Government Sponsored Entities (GSEs), the temporary provision expires on the date the GSEs exit federal conservatorship or receivership or on January 10, 2021, whichever occurs first.

For loans eligible for insurance or guarantee by specified federal agencies, the temporary provision expires on the date the relevant agency's own QM rules take effect or on January 10, 2021, whichever occurs first.²⁶

In addition to the requirements that apply to all four types of QMs – no negative amortization, no interest-only payments, no loan terms in excess of 30 years, and limitations on points and fees – and also like General QMs, Temporary QMs are not permitted to have balloon payment features.

Also, loans falling under the Temporary QM definition must be eligible for purchase or guarantee by Fannie Mae or Freddie Mac while operating under federal conservatorship or receivership; or eligible to be insured by the Federal Housing Administration or Rural Housing Service; or eligible to be guaranteed by the U.S. Department of Veterans Affairs or U.S.

²⁴ The 43 percent monthly DTI ratio is calculated using total monthly debt obligations divided by total monthly income as verified under Appendix Q to Regulation Z – Standards for Larger Creditors.

²⁵ 12 CFR § 1026.43(e)(4).

²⁶ The temporary provision for loans eligible for insurance or guarantee by specified federal agencies is a transition measure designed to give the agencies time to exercise separate authority under the Dodd-Frank Act to determine which of their loans will receive QM status.

Department of Agriculture. Such loans must be approved under the applicable guidelines of these entities, including any relevant DTI requirements. However, these loans do not have to meet the 43 percent DTI ratio threshold for General QMs.

3) Small Creditor QM:²⁷ In addition to the requirements that apply to all four types of QMs – no negative amortization, no interest-only payments, no loan terms in excess of 30 years, and limitations on points and fees – and also like General QMs and Temporary QMs, Small Creditor QMs may not have balloon payment features.

Also, in order for the loan to be a Small Creditor QM, the loan must not be subject to a forward commitment,²⁸ and you must:

- Underwrite the loan based on a fully-amortizing schedule using the maximum rate permitted during the first five years after the date of the first periodic payment;
- Consider and verify the member’s income or assets and debts, alimony, and child support; and
- Consider the member’s DTI’s ratio or residual income. (However, the rule does not set a specific DTI threshold for Small Creditor QMs.)

Small Creditor QMs generally lose their QM status if a small creditor sells or transfers them less than three years after consummation.

However, Small Creditor QMs keep their QM status if they are: sold more than three years after consummation; sold to another creditor that meets the criteria of a small creditor; sold at any time as part of a supervisory action or agreement; or transferred at any time as part of a merger or acquisition of or by the creditor.

4) Balloon-Payment QM: A small creditor meeting the asset and origination limits outlined earlier can originate QMs with a balloon feature until January 10, 2016.²⁹

After January 10, 2016, your credit union and/or affiliate(s) may originate a Balloon-Payment QM only if you still meet the asset size and origination limitations, **and you operate predominately in a rural or underserved area**. These terms differ from NCUA definitions of “rural” and “underserved areas” for chartering purposes. Credit unions may rely as a safe harbor on the list of counties published by CFPB to determine whether a county qualifies as rural or underserved for a particular calendar year. **This Regulatory Alert includes an updated link to CFPB’s list of “rural” and “underserved” areas for 2014.**³⁰

²⁷ 12 CFR § 1026.43(e)(5).

²⁸ A “forward commitment” is an agreement made at or prior to consummation of a loan to sell the loan after consummation, other than to a creditor that itself is eligible to make Small Creditor QMs.

²⁹ 12 CFR § 1026.43(e)(6) and (f).

³⁰ CFPB placed an updated list of rural and underserved counties at <http://www.consumerfinance.gov/blog/final-list-of-rural-and-underserved-counties-for-use-in-2014/>.

Some of the requirements that apply to all four types of QMs – no negative amortization, no interest-only payments, and limitations on points and fees – also apply to Balloon-Payment QMs.

Additionally, the loan must have a fixed interest rate and periodic payments (other than the balloon payment) that would fully amortize the loan over 30 years or less; have a term of five years or longer; and not be subject to a forward commitment.

Also, you must:

- Determine the member will be able to make the scheduled periodic payments, including mortgage-related obligations, other than the balloon payment;
- Consider and verify the member’s income or assets and debts, alimony, and child support; and
- Consider the member’s DTI ratio or residual income. (The rule does not set a specific DTI threshold for Balloon-Payment QMs.)

Like Small Creditor QMs, Balloon-Payment QMs generally lose their QM status if you sell or transfer them less than three years after consummation.

Balloon-Payment QMs keep their QM status if they are: sold more than three years after consummation; sold to another creditor that meets the criteria of a small creditor; sold at any time as part of a supervisory action or agreement; or transferred at any time as part of a merger or acquisition of or by the creditor.

What are the Caps on QM Points and Fees?³¹

All four types of QMs have caps on points and fees.³² The caps depend on the loan amount and are higher for smaller loan amounts.

The table below shows the updated points and fees limit for each loan threshold:³³

Loan Amount	Points and Fees Limit
\$100,000 and up	3 Percent of Total Loan Amount
\$60,000 - \$99,999.99	\$3,000.00
\$20,000 - \$59,999.99	5 Percent of Total Loan Amount
\$12,500 - \$19,999.99	\$1,000.00
Less than \$12,500.00	8 Percent of Total Loan Amount

³¹ The points and fees table and narrative are revised from Regulatory Alert 14-RA-01, to distinguish between the terms “Loan Amount” and “Total Loan Amount” for calculation of allowable points and fees.

³² 12 CFR §§ 1026.32(b)(1), 1026.43(e)(3).

³³ CFPB will adjust the dollar amounts annually for inflation and publish them in the commentary to Regulation Z.

Loan Amount means the principal amount the consumer will borrow as reflected in the promissory note or loan contract.³⁴

Total Loan Amount equals the amount financed minus any points and fees that are rolled into the loan amount.³⁵

The rule requires the points and fees calculation include the following additional categories of charges:³⁶

- Finance charge;
- Loan originator compensation;
- Real estate-related fees;
- Premiums for credit insurance, credit property insurance, other life, accident, health or loss-of-income insurance where the creditor is beneficiary, or debt cancellation or suspension coverage payments;
- Maximum prepayment penalty (federal credit unions cannot charge prepayment penalties, so this provision is applicable only to state-chartered credit unions);³⁷
- Prepayment penalty paid in a refinance (likewise applicable only to state-chartered credit unions); and
- Charges paid by third parties.

Both the rule and the Ability-to-Repay and Qualified Mortgage Small Entity Compliance Guide provide instruction on the types and amounts of charges to be included in making the points and fees calculation.³⁸

If the points and fees for your transaction exceed the maximum allowable points and fees limit, then the loan cannot be a QM.

How Do QMs Protect against Liability?

QMs receive two different levels of protections against legal liability from members asserting a claim the credit union did not comply with ATR requirements in making the loan.³⁹ The level of protection the QM loan receives depends on whether the loan is considered a *higher-priced* QM under the rule.

³⁴ 12 CFR § 1026.43(b)(5).

³⁵ 12 CFR § 1026.32(b)(4). “The total loan amount ... is calculated by taking the amount financed, as determined according to § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii), (iv), or (vi) that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor.”

³⁶ The listing of additional categories of charges is revised from Regulatory Alert 14-RA-01 for clarity. Specifically, “Creditor-paid charges” is removed since only loan originator compensation paid by the creditor must be included in the points and fees calculation. All other charges paid by the creditor may be excluded. 12 CFR § 1026.32(b)(1)(ii), and Comment 32(b)(1)-2.iv (Official Interpretations).

³⁷ Federal credit unions are prohibited from charging prepayment penalties on any loan. 12 U.S.C. § 1757(5)(A)(viii).

³⁸ 12 CFR § 1026.32(b)(1); Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 4.VIII.i (Jan. 8, 2014).

³⁹ 12 CFR § 1026.43(e)(1); Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 4.II (Jan. 8, 2014).

For a QM loan that is *not* higher-priced, the court will conclusively presume that you complied with the ATR rule. In other words, non-higher-priced QMs enjoy a legal *safe harbor* against claims you failed to make a reasonable and good-faith determination of repayment ability. If the court agrees with the determination that the loan meets QM standards and is not higher-priced, the member would not prevail on this claim.

For a higher-priced loan that meets QM criteria, a court will presume it complies with the ATR requirement. However, the member may offer evidence to rebut this presumption. To prevail on this argument, the member must show that based on the information available to you at the time the mortgage was made, the member did not have enough residual income left to meet living expenses after paying his or her mortgage and other debts.

What makes a QM Loan Higher-Priced?

General and Temporary QMs are considered higher-priced if they have an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) by:⁴⁰

- 1.5 percentage points or more for first-lien loans; or
- 3.5 percentage points or more for subordinate-lien loans.

Small Creditor and Balloon-Payment QMs are considered higher-priced if they have an APR that exceeds the APOR by 3.5 percentage points or more for both first-lien and subordinate-lien loans.

When Are Prepayment Penalties Allowed for QM Loans?

Federal credit unions are prohibited from charging prepayment penalties on any loan.⁴¹

State-chartered credit unions may include a prepayment penalty option only for fixed-rate or step-rate QMs that are *not higher-priced* – and only when applicable law otherwise permits the prepayment penalty.⁴²

The rule's definition of a prepayment penalty does not include certain bona fide third-party charges waived at consummation (and expected to be reimbursed via the interest rate) in cases where a member fully prepays the loan within three years and must repay the charges. In addition, state-chartered credit unions cannot impose a prepayment penalty after the first three years of the loan term. The prepayment penalty cannot be greater than 2 percent of the outstanding loan balance prepaid during the first two years of the loan or 1 percent of the outstanding loan balance prepaid during the third year of the loan.

Additionally, state-chartered credit unions must offer the member an alternative transaction for which the member will reasonably qualify. The alternative loan cannot have a

⁴⁰ See <http://www.ffiec.gov/ratespread/aportables.htm> for a listing of APOR tables.

⁴¹ 12 U.S.C. § 1757(5)(A)(viii).

⁴² 12 CFR § 1026.43(g); Ability-to-Repay and Qualified Mortgage Rule Small Entity Compliance Guide, sec. 4.IX (Jan. 8, 2014).

prepayment penalty and must be similar to the loan with the prepayment penalty. The alternative loan must be a fixed-rate or graduated-payment loan and must match the rate type from the loan with the prepayment penalty; must have the same term as the mortgage with the prepayment penalty; and cannot have deferred principal, balloon or interest-only payments, or negative amortization.

As a reminder, you must also retain evidence of compliance with the ATR/QM rule, including the prepayment penalty limitations, for a minimum of three years after loan consummation.

What Other Guidance is Available?

In addition to the referenced enclosures on the title page of this document, other resources are available. The full text of the ATR and QM Regulation, along with the revisions to the final rule, can be found at <http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/>

Another CFPB resource that can help you understand the rule is:

General Comparison of Ability-to-Repay Requirements with Qualified Mortgages:
http://files.consumerfinance.gov/f/201308_cfpb_origination-coverage-and-exemptions-chart.pdf

Federal regulators also issued guidance to address questions involving fair lending compliance and the supervisory approach for QMs:

Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule:
www.ncua.gov/News/Press/StmtFairLendingCompliance20131022.pdf

Interagency Statement on Supervisory Approach for Qualified and Non-Qualified Mortgage Loans: <http://www.ncua.gov/News/Press/QualifiedMortgageLoansJointStmt.pdf>

If you have questions, contact NCUA's Office of Consumer Protection at (703) 518-1140 or at ComplianceMail@ncua.gov, or contact your regional office or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman