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Consumer Financial Protection Board (CFPB) QM Rule

The increasing risks created by the regulatory environment are making it tougher for banks to participate in the real estate market. We have seen a trend of banks leaving the real estate market over the past few years as a result of dried up funding sources due to tougher regulator rules governing the risk weighting of property assets. As a result, home buyers / homeowners are finding it increasingly difficult to qualify for affordable real estate financing.

For the past two years, Congress has been working with the Consumer Financial Protection Board (CFPB) to establish a solution to the growing problem. As a result, they established a presumption of compliance for a certain category of mortgages, Qualified Mortgages (QM). Recently the CFPB issued its long awaited QM Rule, Summary click here. The new Rule will take effect on January 14, 2014.

The CFPB QM Rule balances some of the risks associated with the real estate lending process. The presumption of QM is to establish a standard to determine the borrowers' ability to repay a loan, and if followed, the QM Rules protect lenders from borrower lawsuits and presumably, from being forced to repurchase QM loans from investors.

In order to be classified as a QM loan, at a minimum, creditors generally must consider eight underwriting factors:

1. Current or Reasonably Expected Income or Assets
2. Current Employment Status
3. Monthly Payment on the Covered Transaction
4. Monthly Payment on any Simultaneous Loan
5. Monthly Payment for Mortgage-Related Obligations
6. Current Debt Obligations, Alimony, and Child Support
7. Monthly Debt-To-Income Ratio or Residual Income
8. Credit History

Under the new guidelines, there are 3 categories of mortgages:

1. Qualified Mortgage (QM) **-** Safe Harbor QM loans. 1st lien loans meeting the 8 requirements and having an interest rate of less than 1.5% (or 3.5% for subordinate lien loans) higher than the average prime offer rate available.

2. Qualified Residential Mortgage (QRM) - QM Risk Retention / Rebuttable Presumption Loans. These are QM's that qualify for a rebuttable presumption of compliance as protection from the same penalties and liabilities as Safe Harbor loans. 1st lien loans having an interest rate equal or greater than 1.5% (or 3.5% for subordinate lien loans) above the average prime offer rate available ("Higher-Priced Loans").

3. Non-QM loans - Offer the lender no legal protection against suit by the borrowers.

The new QM Rule calls for a 43% maximum debt ratio, which is lower than the current maximum debt ratio for the GSE's - FNMA (44.99%) and FHLMC (49.99%).

In conclusion, the theory behind the new QM Rule is the rule will force the pendulum in the other direction thus creating a more balanced mortgage-lending environment for both the banks and borrowers. Given the effective date of January 2014, we expect many additions and revisions to the rule between now and the effective date.