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Primer specifically for
Lenders regarding the New CFPB Rules
Let's Start the Dialogue

Ability to Repay (ATR)

<u>TILA Regulation</u>

- Effective – Applications Received after 1/20/2014
- Residential Mortgage Loans
  - Loan Secured by 1-4 Unit Dwelling (Includes Mobile Home)
  - Purchase, Refinance, Home Equity (Not HELOC)
  - 1st Lien or Subordinate
  - Principal Residence or Second Home

<u>The General Rule</u>

- Lender may not make a residential mortgage loan unless
  - Lender makes reasonable and good faith determination
  - Based on verified documented information
  - At or before consummation
  - Determination that borrower will have a reasonable ability to repay the loan according to the loan terms.

<u>ATR Underwriting Requirements</u>

Eight Factors must be Considered and Verified by 3rd Party Sources:

1. Income and Assets
2. Employment
3. Monthly Payment of Loan
4. Monthly Payment of any Simultaneous Loan if Known or Has Reason to Know
5. Monthly Payment for other mortgage related obligations
6. Current Debt Obligations
7. Debt to Income (Residential Income)
8. Credit History
   - Rule does not set underwriting standards. Lender decides what credit score, Debt-to-Income ratio, etc. No specific product features.
   - Problem: Borrower can argue standards weren't high enough so no reasonable determination that could repay loan.

<u>Liability for Violation</u>

- Actual Damages (Down Payment)
- Statutory Damages (Finance Charges and Fees)
- Court Costs and Attorney's Fees
- Defense to Foreclosure by Recoupment or Set Off
- Three Year Statute of Limitation except foreclosure action
- Lender and later assignee of Mortgage

Qualified Mortgage (QM)

Product Features

- Loan Term - 30 Years or Less
- Regular Periodic Payments Substantially Equal (No interest only, negative amortization, balloon payments with limited exception.)
- Underwriting
  - 43% DTI (very specific underwriting standards and calculations); or Alternative GSE/Federal Agency Standards (if at consummation, the loan is eligible to be purchased by Fannie or Freddie when still under conservatorship, or eligible for guarantee by HUD, VA, Rural Housing, then can be QM in other words the loan meets those underwriting standards. This alternative is time limited. If GSEs out of conservatorship or other federal agencies issue own rules, or 7 years, then this alternative expires.)
  - Maximum Points and Fees for loans of $100,000 or more, have cap of 3%. For lesser loan amounts, other caps apply

Liability Protections for QM

- "Prime" QM has APR does not exceed Average Prime Offer Rate by 1.5 or more percentage points for 1st lien or 3.5 for second lien.
- "High Cost" QM – APR does exceed by 1.5 or more, or 3.5 or more for second lien (APOR – is published rate)

For "Prime QM", there is a conclusive presumption or "safe harbor" that the Ability to Repay requirements were met. The "reasonableness" and "good faith" of lender is not in question. Borrower can attack whether it is QM. For "High Cost" QM there is a rebuttable presumption, that lender was reasonable and in good faith. Borrower can challenge by evidence, for example, that residual income not enough to meet living expenses and therefore not reasonable determination.

Special QM / Exception

- Rural Balloon Payment QM
  - Lender in rural or underserved area
  - No more than 500 first lien mortgages a year
  - Less than $2 billion in assets
  - Other QM requirements met (other than loan term and balloon payment)
  - No adjustable rate
  - Lender keeps the loan (if sold, losses QM status)
- Refinancing "non-standard" mortgage into "standard" mortgage
  - Non-standard mortgages examples: ARM, interest only, negative amortization
  - Lender is holder of the non-standard mortgage
  - Monthly payment of standard mortgage is materially lower
  - No more than 1 payment 30 days late within last 12 months

Loan Originator Compensation Rule

<u>TILA Regulation</u>

- Issued January 10, 2013
- Effective January 10, 2014 except prohibition of mandatory arbitration and financing of credit life insurance are effective June 1, 2013
- Closed-end consumer credit secured by dwelling

<u>LO Compensation Prohibitions</u>

- Prohibits loan originator compensation, direct or indirect, based on the loan terms
- Prohibits dual compensation – cannot be paid by both creditor, or other person and consumer

<u>Anti-Steering</u>

- Loan Originator is prohibited from "steering" a borrower to a loan that results in more compensation for the originator unless it is in borrower's best interest
- Violation of Anti-Steering
  - actual damages (down payment)
  - statutory damages up to $4,000
  - all fees and up to 3 years finance closing paid
  - court costs and attorney's fees
  - three year statute of limitation except in foreclosure action
  - claim can be made against lender or assignee

CFPB Timeline

- Final Rules – January 10, 2013
- Effective Dates – January 10, 2014
- ***Not Integrated Disclosures***
  - Final rule expected in August/September (see, CFPB New Rules Primer and Closing Disclosure Form)

Source Materials Used: Thank you to Jim Gosdin and Deborah Yahner of Stewart Title Guaranty Company for the above information.

