Qualified Mortgage (QM) Criteria
3% Fee Cap—What goes in to the calculation of fees?

The same test is used for HOEPA and for QM. It includes everything that goes in to the finance charge calculation except for the following:

- Interest
- Mortgage insurance premiums from federal or state agency program
- Bona fide third party fees not retained by bank

It includes all of the fees that are typically exempt (as real estate fees in the finance charge definition: 1026.4(c)(7)) unless:

- The charge is reasonable
- The creditor doesn’t receive the fee directly or indirectly
- The charge is not paid to an affiliate

It does include credit insurance and debt cancellation premiums.
It excludes up to two discount points (which are points that buy down the rate) if the rate without the discount does not exceed the APOR + 1%.

Put another way, the fees tested for this item do NOT include third party doc prep fees, third party appraisal fees, survey, recording fees, or title insurance premium (assuming that the title insurance company is not an affiliate).

The 3% does not include insurance, taxes, and escrow.

What loans are covered?

Every loan secured by a dwelling – not just the principal dwelling! There are exclusions for HELOC, reverse mortgage, construction phase of 12 months or less of a construction-to-permanent loan, and bridge loan (12 months or less).

So, would a loan secured by a rent house (or vacation home) that is used as collateral for a loan with personal purposes covered by the QM requirements?

Yes.

What are the consequences of not meeting the requirements of the QM test?

Failure to verify ability to repay leaves the institution open to a defense in foreclosure that the party did not meet the requirements when the loan was made. While this defense is open ended (not time limited), presumably payment for a period of time would rebut that defense!

However, violation of the QM requirements would appear to be a violation of TILA generally, leaving the bank subject to the civil liability provisions of the act. This would include liability for actual damages, attorneys’ fees and a penalty of at least $2,000. The statute of limitations for claims is now three years, and a violation can be used by way of setoff recoupment in a collection suit.
What is the scope of the “rural or underserved” definition? What are the requirements?

The bank must have less than $2B in assets, originate no more than 500 mortgage loans per year, and originate at least 50% of first lien mortgages in rural or underserved areas, holding these in portfolio at least three years.

What counties are “rural” or “underserved”?

There is a complicated explanation in the rule. Just note that the CFPB has come out with a list. IBAT has put that on its web site along with a map of the Texas counties.

What is the significance of meeting the “rural or underserved” county test?

The following exemptions apply:

- Balloon payment restriction for high-cost mortgage
- Requirement for escrow on HPML loan
- Requirement for second appraisal for certain HPMLs
- Exemption from second appraisal for properties located in rural counties
- Requirement in QM test prohibiting balloon payments.

So, if this test is met, can the bank’s offices that are not in a rural county make balloon notes?

Yes. The note should not balloon before five years. (Three year balloons are out.)

Avoid escrow on HPML loan?

Yes.

Ability to repay test.

If a loan has a balloon payment (as permitted), does the calculation have to use the balloon payment as part of the “fully indexed” calculation?

No, if the loan is not a higher priced one. Yes, if it is!

How can self-employed applicants ever satisfy the verification of income?

Appendix Q to TILA has very detailed explanations on how to calculate income including from a variety of sources, seasonal and part time income, commissions, retirement and self-employment income. The person would need to be self-employed for at least two years, provide tax returns with all applicable tax schedules, and establish their earnings trend.

Debt/Income Ratio on ARM loans

Are we able to show potential income increases that might happen in the next 5 years to compare with potential loan payment changes over 5 years?

The income evaluation is over a three year period. Income is based on the income patterns for the past two years. It may take into consideration anticipated retirement income. The comparison must be to the fully indexed rate.
Are we to include potential changes in property insurance and property taxes changes to the escrow payment over 5 years?

No. According to the commentary, the creditor need not project potential changes, such as by estimating possible increases in taxes and insurance.

What about a vehicle purchase and new loan payment during the same 5 years?

Speculative. Use debt information that is known at the time the loan is underwritten. But you CAN consider the fact that an existing auto loan will be paid off in that five year period!

Is the Ratio based on Gross Income or Net Income after all deductions (income tax, retirement contribution, Social Security, etc.)?

Gross. The commentary indicates that taxes are not considered “debt” and are not deducted.

IRS Tax Returns
Can we pass the cost along to the Borrower when we get a copy of the tax return from the IRS?

Yes, per the commentary.

What do we do when Borrower refuses to pay the fee and says here is a copy of my tax return when we are required to get independent income verification?

You can accept copies of returns, signed by the borrower(s).

Appraisals
Is it okay to not require an appraisal on a small home equity loan?

First, the appraisal guidelines require at least an evaluation if an appraisal is not required! But, second, the appraisal would be required if the loan were a HPML. There are exemptions from the appraisal requirements for reverse mortgages, initial construction, temporary bridge (12 months or less), and HELOC as well as new manufactured housing.

With regard to the Reg B changes on providing the copy of the appraisal, how can that be sent?

It can be emailed (if E-SIGN consents and rules are met) or mailed or hand delivered. It must be provided promptly upon completion or not later than three business days prior to consummation of the loan. Delivery occurs three business days from mailing. So, essentially count six business days between mailing the appraisal and consummation!

Does this Reg B delivery of the appraisal only apply to the principal dwelling loan?

No! In fact, it applies to commercial loans that are secured by a dwelling.

Flipping property (Second appraisal requirement)
How do you treat property that was inherited, and how do you determine the seller’s basis?
It is exempt. You don’t care what the basis is. Other exemptions include acquiring title through foreclosure or deed-in-lieu; acquisition as a result of a divorce or joint party division; from employer in connection with the relocation of an employee; from a servicemember who received a deployment or POS after purchase; disaster area property or rural county property.

What if the transaction is not exempt and the seller refuses to give the Bank their cost basis?

You won’t be able to determine whether the price results in the two appraisals, so you have to get two appraisals in any event. One of them shall include an analysis of the following factors: changes in market conditions and improvements to property.

What are the requirements for counseling?

Within three business days of the application, provide a list of approved counselors. (This is an amendment to RESPA rules.) The CFPB will maintain a web site with the info on counselors. Only reverse mortgages are exempt from this requirement.

Obtain confirmation of counseling if the applicant is a first time home buyer or if the loan as negative amortization.

What if there are no counselors that are convenient to the applicant?

The counseling could be performed by telephone.

Does the prohibition concerning pre-dispute binding arbitration apply to all loans or only principal dwelling?

For closed end loans, all loans secured by a dwelling. This includes second homes. For HELOCs, it must be the principal dwelling. However, the docs could include a jury waiver.

We make interim construction to permanent loans. How do the rules apply? The interim phase is always going to be problematic under the QM standards!

I think that the rule and the commentary are clear that the HPML and HOEPA tests are on the permanent phase. The construction phase is exempt from HPML and HOEPA. So, if the transaction is high or higher cost, the special rules only apply to the second stage.

If the transaction is disclosed with a single rate (rather than two disclosures), then the APOR plus margin is tested against that rate. But if you are providing two disclosures with two different rates, test the permanent rate only.

The construction phase is also exempt from the QM test. Therefore, you apply the QM test on the permanent loan portion. So, repayment ability is tested based on the terms of the permanent phase as are the fees and points limit (as defined—which basically excludes third party fees that are reasonable). The other QM requirements apply including no negative amortization, no interest only payments (on the permanent phase), no balloon payments, and term of up to 30 years.
MLO Issues

Our Retail production is considering a structure where we could have more than one MLO involved in the origination of a mortgage loan. (A Jr. LO could take the application and generate the GFE, and a Sr. LO would be responsible for the oversight of the Jr LO.) If that is the case, which name and NMLS# should be on the loan docs?

The rule indicates that the loan originator with “primary responsibility” for the origination is the one whose number is to be used. The commentary indicates that a bank that establishes and follows a reasonable, written policy for determining which individual has “primary” responsibility for the transaction at the time the document is issued complies with the rule. Although you have designated the person taking the app as a “junior LO”, it appears that this is the person actually handling the origination at the time the application is being taken. Therefore, I would use that LO’s number on the credit application. Your policy could theoretically conclude, however, that the senior LO has the primary responsibility for the note and deed of trust, and that therefore, the senior LO’s number would go on those docs.

It was my understanding that persons handling modifications as part of loss mitigation for loans in collection were exempt from NMLS registry. The rationale is that they do take “applications” and thus do not meet the two-prong test for SAFE Act. Do those persons handling these activities need to be registered as MLOs?

The MLO qualification rule does not require persons who are not subject to the SAFE Mortgage Act licensing/registration to be licensed or registered. It does require those persons to meet the criminal background and credit checks and training requirements of the rule.

What are the “admin” matters that must be listed for MLO qualification?

This refers to “administrative determinations by any government jurisdiction.” This would be disciplinary or enforcement actions. Examples would include formal orders or civil money penalty actions against a specific officer by name. You can find these online at the various agency web sites, by the way. The worst ones would be removal or prohibition orders (removing an officer from a bank/prohibiting from participating in another bank).

Please clarify the requirement to get credit checks.

One thorny issue is whether or not a bank has to obtain credit checks on all of its existing MLOs. The rule relating to qualifications for MLOs indicates that it goes into effect for person hired on or after January 10, 2014. But the bank must also obtain certain information on loan originators hired before that date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire.

I read the commentary on “Retroactive obtaining of information not required” as meaning that if the LO were hired in the period when SAFE Mortgage Act rules required certain background information for bank employees, then they are exempt. The LO was screened under the “applicable statutory or regulatory background standards in effect at the time of hire.” Therefore, the requirements for the exemption would appear to be satisfied.