## Ability-to-Repay (ATR) and Qualified Mortgages (QM) Quick Reference Chart (January 1, 2014)

Not intended to be legal nor other expert professional advice or services.

| Mortgage Loan Category* | Standard ATR | General QM | [ Temporary QM ] Agency/GSE QM | Small Creditor QM [Portfolio Loans] | [ Small Creditor ] Balloon Payment QM | Certain Creditor Balloon Payment QM | Refi Non-Standard Mortgage (NSM) to Standard Mortgage (SM) |
|---|---|---|---|---|---|---|---|
| **Regulation Z Citation** | § 1026.43 (c) | § 1026.43 (e) (2) | § 1026.43 (e) (4) (Note 5) | § 1026.43 (e) (5) | § 1026.43 (e) (6) | § 1026.43 (f) | § 1026.43 (d) |
| **Temporary Category** | | | Expires ≤ January 10, 2021 | | Expires January 10, 2016 | | |
| **Small Creditor Criteria** | | | | Creditor assets < $2 Billion at last 12/31 **and** ≤ 500 1st lien CT's originated by Creditor & affiliates in last calendar year | Creditor assets < $2 Billion at last 12/31 **and** ≤ 500 1st lien CT's originated by Creditor & affiliates in last calendar year | Creditor assets < $2 Billion at last 12/31 **and** ≤ 500 1st lien CT's originated by Creditor & affiliates in last calendar year | |
| **Other Criteria** | | | | | | > 50% of CTs originated in RUS Counties in **any** of the 3 preceding calendar years | Only 1 30-day late in past 12 mths & no lates w/i last 6 mths. App w/i 2 mths after recast. SM should not increase likelihood of default. |
| **Liability Protection (Note 8)** | No Safe Harbor or Rebuttable Presumption | Non-HPCT = Safe Harbor HPCT= Rebuttable Presumption | Non-HPCT = Safe Harbor HPCT= Rebuttable Presumption | Non-HPCT = Safe Harbor HPCT= Rebuttable Presumption | Non-HPCT = Safe Harbor HPCT= Rebuttable Presumption | Non-HPCT = Safe Harbor HPCT= Rebuttable Presumption | No Safe Harbor or Rebuttable Presumption Not subject to ATR Standards - (Note 8) |
| **HPCT Test: First Lien (Note 9)** | ≥ 1.5% over APOR (Note 9) | ≥ 1.5% over APOR | ≥ 1.5% over APOR | ≥ 3.5% over APOR | ≥ 3.5% over APOR | ≥ 3.5% over APOR | |
| **HPCT Test: Subordinate Lien** | ≥ 3.5% over APOR (Note 9) | ≥ 3.5% over APOR | ≥ 3.5% over APOR | ≥ 3.5% over APOR | ≥ 3.5% over APOR | ≥ 3.5% over APOR | |
| **No Deferment of Principal** | No Limitations (Note 7) | No Deferment of Principal | Conform to GSE/Agency Stds | No Deferment of Principal | No Deferment of Principal | No Deferment of Principal | No Deferment of Principal |
| **No Neg Amort or Incr Princ** | No Limitations (Note 7) | No Neg Amort or Incr Princ | No Negative Amortization | No Neg Amort or Incr Princ | No Neg Amort or Incr Princ | No Neg Amort or Incr Princ | No Negative Amort or Increased Principal |
| **No Interest-Only Payment** | No Limitations (Note 7) | No Interest-Only Payments | No Interest-Only Payments | No Interest-Only Payments | No Interest-Only Payments | No Interest-Only Payments | No Interest-Only Payments |
| **No Balloon Payments** | No Limitations (Note 7) | No Balloon Payments | No Balloon Payments | No Balloon Payments | | | No Balloon Payments |
| **No Interest Rate Increase** | No Limitations (Note 7) | | | | Fixed interest rate only | Fixed interest rate only | Fixed interest rate for 1st 5 years after closing |
| **Post-Closing Transfer Restrictions** | No Limitations (Note 7) | | | Very Limited Post-Closing Transfer allowed in ≤ 3yrs | Very Limited Post-Closing Transfer allowed in ≤ 3yrs | Very Limited Post-Closing Transfer allowed in ≤ 3yrs | |
| **Prepayment Penalty (Note 6)** | | Allowed w/Non-HPML QM w/APR w/no incr & alternative offered | Conform to GSE or Agency Standards | Allowed w/Non-HPML QM w/APR w/no incr & alternative offered | Allowed w/Non-HPML QM w/APR w/no incr & alternative offered | Allowed w/Non-HPML QM w/APR w/no incr & alternative offered | |
| **Loan Proceeds' Use Restriction** | | | | | | | NSM Loan Payoff & Closing Costs Only |
| **Loan Term Limit** | No Limitations | ≤ 30 years | ≤ 30 years | ≤ 30 years | ≤ 30 years <u>and</u> ≥ 5 years | ≤ 30 years <u>and</u> ≥ 5 years | ≤ 40 years |
| **Points and Fees Threshold** (Threshold dollar amounts in thousands = $ K and will be adjusted annually by CPI) | No Limitations | Loans ≥ $100K = 3%<br>Loans ≥ $60K but < $100K =$3K<br>Loans ≥ $20K but < $60K = 5%<br>Loans ≥ $12.5K but <$20K =$1K<br>Loans < $12,500 = 8% | Loans ≥ $100K = 3%<br>Loans ≥ $60K but < $100K =$3K<br>Loans ≥ $20K but < $60K = 5%<br>Loans ≥ $12.5K but <$20K =$1K<br>Loans < $12,500 = 8% | Loans ≥ $100K = 3%<br>Loans ≥ $60K but < $100K =$3K<br>Loans ≥ $20K but < $60K = 5%<br>Loans ≥ $12.5K but <$20K =$1K<br>Loans < $12,500 = 8% | Loans ≥ $100K = 3%<br>Loans ≥ $60K but < $100K =$3K<br>Loans ≥ $20K but < $60K = 5%<br>Loans ≥ $12.5K but <$20K =$1K<br>Loans < $12,500 = 8% | Loans ≥ $100K = 3%<br>Loans ≥ $60K but < $100K =$3K<br>Loans ≥ $20K but < $60K = 5%<br>Loans ≥ $12.5K but <$20K =$1K<br>Loans < $12,500 = 8% | Loans ≥ $100K = 3%<br>Loans ≥ $60K but < $100K =$3K<br>Loans ≥ $20K but < $60K = 5%<br>Loans ≥ $12.5K but <$20K =$1K<br>Loans < $12,500 = 8% |
| **Underwriting Standards** | App Q not mandatory | *Appendix Q mandatory* | GSE/Agency standards | App Q not mandatory | App Q not mandatory | App Q not mandatory | No ATR requirement |
| **1) Monthly Loan Payment Underwriting Method** *Refer to Commentary for very specific, detailed payment calculation guidance!!* | Substantially equal, fully amortizing pymts using > fully indexed or intro rate; <u>excluding</u> **non-HPCT** balloon pymt if it is due > 5 yrs after 1st pymt or <u>including</u> HPCT balloon pymt | P & I pymt (at max int rate during 1st 5 years after 1st reg periodic pymt) that repays outstanding princ bal as of rate adjust date or loan note amt over loan term | Regular, equal periodic pymts (ARM or step rate mtg ok) that do not increase principal; Conform to GSE or Agency Standards | P & I pymt (at max int rate during 1st 5 years after 1st reg periodic pymt) that repays outstanding princ bal as of rate adjust date or loan amt over loan term | Interest rate that does <u>not</u> increase; substantially equal payments amortized ≤ 30 years, <u>excluding</u> balloon payment | Interest rate that does <u>not</u> increase; substantially equal payments amortized ≤ 30 years, <u>excluding</u> balloon payment | New pymt ≥ 10% < NSM pymt based on principal at recast. SM pymt = equal, fully amortizing pymts using max int rate in 1st 5 yrs. NSM pymt = equal, fully amort pymts @ fully indexed rate @ written app over term |
| **2) Simultaneous Loan Payment** | Consider and verify Non-App Q (Note 4) | Included in underwriting DTI Ratio (Note 2) | Conform to GSE or Agency Standards | Included in underwriting DTI Ratio (Note 2) | Included in underwriting DTI Ratio (Note 2) | Included in underwriting DTI Ratio (Note 2) | No ATR requirement |
| **3) Mortgage-Related Obligations (Note 1)** | Consider and verify Non-App Q (Note 4) | Included in monthly payment underwriting and DTI Ratio | Conform to GSE or Agency Standards | Included in monthly payment underwriting and DTI Ratio | Included in monthly payment underwriting and DTI Ratio | Included in monthly payment underwriting and DTI Ratio | No ATR requirement |
| **4) Income and/or Assets** | Consider and verify w/o this property non-App Q | Consider & verify per Appendix Q w/o this property | Conform to GSE or Agency Standards | Consider and verify w/o this property (Non-App Q) | Consider and verify w/o this property (Non-App Q) | Consider and verify w/o this property (Non-App Q) | No ATR requirement |
| **5) Employment Status (Stability of Income)** | Consider and verify Non-App Q (Note 4) | Included in underwriting App Q DTI Ratio (Note 2) | Conform to GSE or Agency Standards | No specific requirement | No specific requirement | No specific requirement | No ATR requirement |
| **6) Debt, Alimony, Child Support (Current Debt Obligations)** | Consider and verify Non-App Q (Note 4) | Consider and verify per App Q (Note 4) | Conform to GSE or Agency Standards | Consider and verify Non-App Q (Note 4) | Consider and verify Non-App Q (Note 4) | Consider and verify Non-App Q (Note 4) | No ATR requirement |
| **7) Debt-to-Income (DTI) Ratio or Residual Income** | Consider & verify DTI or residual income Non-App Q (Note 4) | DTI must be ≤ 43% per Appendix Q | Conform to GSE or Agency Standards | Consider & verify DTI or residual income Non-App Q (Note 4) | Consider & verify DTI or residual income Non-App Q (Note 4) | Consider & verify DTI or residual income; Non-App Q (Note 4) | No ATR requirement |
| **8) Credit History (Note 3)** | Consider & verify Non-App Q (Notes 3 & 4) | Included in underwriting DTI, (Note 2 & Note 3) | Conform to GSE or Agency Standards | No specific requirement (Note 3) | No specific requirement (Note 3) | No specific requirement (Note 3) | No ATR requirement (Note 3) |

* Mortgage Loan Category: To the extent possible, this terminology is consistent with the CFPB's ATR and QM compliance guides.

This chart compares the general ATR requirements with the requirements for originating QM loans and is based on the CFPB's chart found at http://files.consumerfinance.gov/f/201304_cfpb_comparison-chart_atr-vs-qm-requirements.pdf . Additional requirements may apply, particularly for balloon-payment QM loans. This chart is not a substitute for the ATR Rule. Only the Rule and its Official Interpretations can provide complete and definitive information on its requirements. The complete rule, Official Interpretations and the small entity compliance guide are available at http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lendingact-regulation-z/ . The ATR/QM requirements do **not** apply to modifications. You can provide a loan modification to a defaulted or non-defaulted consumer without complying with ATR. Refer to § 1026.20(a) for guidance on refinance versus modification. QM's receive two different levels of protection from liability:

**Safe Harbor:** QM is conclusively presumed to comply with ATR when it is **not** a HPCT. Consumer must prove QM does not meet QM requirements, and then would be able to challenge ability-to-repay decision at consummation.

**Rebuttable Presumption:** QM is presumed to comply with ATR if it is a HPCT, but consumers can prevail by proving insufficient residual income for living expenses based on information available to Creditor at consummation.

**Note 1:** "Included in monthly payment underwriting" means that the Ability to Repay Rule ("ATR" or "Rule) does not require the Creditor to separately consider and verify this factor in any specific manner. However, a Creditor must consider and verify this factor when underwriting the consumer's monthly payment under the Rule. As a result, you have an indirect responsibility to ensure you have adequately quantified the consumer's information to accurately determine ability to repay.

**Note 2:** "Included in underwriting DTI" means that the Ability-to-Repay Rule ("ATR" or "Rule) does not require the Creditor to separately consider and verify these factors in accordance with Appendix Q. However, a Creditor must, by the nature of the debt-to-income (DTI) formula for ATR purposes, accurately determine the numerator (all known debt) to be divided by the denominator (all known income) when determining whether the consumer's DTI meets either the 43% DTI threshold for the General QM category, or the bank-specific underwriting guidelines including DTI for other QM and non-QM categories (i.e. Temporary Agency QM, Standard ATR, etc.).

**Note 3:** Although a specific methodology for consideration and verification of a consumer's credit history is not detailed in the General QM definition, you must verify a consumer's debt obligations using reasonably reliable third-party records, which may include use of a credit report or records that evidence nontraditional credit references (utility payments, rental history, etc.). The bank may include other relevant factors in its underwriting, such as consumer's payment history specifically for our bank loans.

**Note 4:** For General QMs, a Creditor must rely on App Q. When Appendix Q does not resolve how a specific type of debt or income should be treated, Creditors may rely on guidelines of the GSEs or federal agencies specified in §1026.43 (e) (4), Temporary QM, to resolve. When GSE or Agency guidelines conflict with App Q, General QMs must rely on App Q. The App Q standards which are mandatory for the General QM, will generally be used as a **guideline** in determining bank underwriting policy on all other covered transaction loan types as noted above. Whether intended or not, Appendix Q will likely be the measure by which all other underwriting will be judged in exams or in court, and should be used as a basis in customizing bank non-General QM standards.

**Note 5:** Although this Temporary QM (Agency/GSE QM) provision expires, loans eligible for purchase or guarantee by the GSEs or certain federal agencies at origination will retain that QM status after the provision expires. This temporary provision is a transition measure designed to give GSE and agencies time to exercise separate authority under the Dodd-Frank Act to determine their own QM requirements. The Temporary QM provision for loans eligible for purchase or guarantee by GSEs is scheduled to expire **on the later of** date the GSEs exit federal conservatorship or receivership, or on January 10, 2021. The Temporary QM provision for loans eligible for insurance or guarantee by certain federal agencies will expire on the date the relevant agency's own QM rules take effect or on January 10, 2021, whichever occurs first. Creditor does not have to satisfy GSE or agency standards which are wholly unrelated to ability to repay of the loan, or any Agency or GSE standards applicable after loan closing. **DOCUMENT LOAN!!**

**Note 6:** Prepayment penalties are permitted per §1026.43(g)(2)(ii) for non-HPML QM (§ 1026.35(a)) with an APR that cannot increase after loan consummation (fixed rate or step-rate mortgages). The prepayment penalty, if allowed, must not apply after the first 3 years following consummation **and** cannot exceed 2% of outstanding loan balance prepaid during years 1 or 2, or 1% if incurred during the third year. A prepayment penalty in excess of the prescribed amount or allowable time period results in the loan being classified as an HPML and HPMLs are prohibited from having a prepayment penalty. If you do offer a permissible prepayment penalty, you must also offer an alternative fixed-rate or graduated-payment loan with the same rate type and term without a prepayment penalty that you believe the consumer will qualify for. The alternative loan must have no toxic features (deferred principal, balloon or interest-only payments, or negative amortization). Brokers or organizations table funding loans may use existing safe harbor for anti-steering rules for loan origination under §1026.36(e) showing consumer a loan with lowest interest rate, a loan with lowest interest rate with a prepayment penalty, and a loan with the lowest total origination points or fee and discount points.

**Note 7:** The ATR rule does not ban any particular loan features or transaction types for a Standard ATR category loan. However, a particular loan to a particular consumer is not permissible if the creditor does not make a reasonable, good-faith determination that the consumer has the ability to repay. Thus, the rule helps ensure underwriting practices are reasonable.

**Note 8:** To the extent that the loan is not subject to ATR standards, such as in the "Refinance a Non-Standard to a Standard Mortgage," no private right of action is granted to the consumer. The loan remains subject to standard TILA (Regulation Z) penalties.

**Note 9:** The primary purpose of the HPCT Test is to determine whether a QM is entitled to safe harbor or rebuttable presumption of compliance. However, it is also used under the Standard ATR category (§1026.43(c)) to determine whether you must use the balloon payment on a balloon loan in your underwriting payment analysis (§1026.43(c)(5)(ii)(A)) and calculation of the Debt-to-Income ratio or residual income analysis. The higher percentage first lien threshold of 3.5% over APOR for Small Creditor QMs or Certain Creditor QMs is not available to test Standard ATR balloon loans' APR! The 3.5% for first liens is only available for Small Creditor Qualified Mortgages (§1026.43 (e)(5) or (e)(6)) or Certain Creditor Qualified Mortgages (§1026.43(f)) as noted above.

**Legend:**

**CT = Covered Transaction:** Closed-end consumer credit transaction secured by a dwelling, with or without land. Includes primary residences and other personal residences (second or vacation home, etc.).

**DTI = Debt-to-Income Ratio:** Consumer's monthly debt-to-income ratio under paragraph 1026.43(c)(2)(vii) is the ratio of total monthly debt obligations divided by total monthly income.

**GSE = Government Sponsored Enterprise:** The ATR/QM Rule primarily refers to Fannie Mae (FNMA) and Freddie Mac (FHLMC) or their successors.

**HPCT = Higher-Priced Covered Transaction (HPCT):** A QM with an APR in excess of the APOR by the applicable threshold as of final date the interest rate is set. This is **NOT** the same test as the HPML test! This test **only** applies to QMs with one exception.

**HPML = Higher-Priced Mortgage Loan (HPML): An HPML** is a closed-end consumer credit transaction secured by the consumer's **principal dwelling** with an APR that exceeds the APOR for a comparable transaction as of the date the interest rate is set by $\geq$ 1.5% points for non-jumbo 1st lien loans, $\geq$ 2.5% points for jumbo 1st lien loans, or $\geq$ 3.5% points for subordinate lien loans. Jumbo thresholds are consistent with Freddie Mac's maximum principal obligation eligible for purchase. Test applies to QMs and non-QMs.

**RUS = Rural or Underserved (RUS) County:** The CFPB annually determines if a county is considered to be rural or underserved and publishes the official list annually for ATR and QM purposes. A county is **rural** if it is neither in a metropolitan statistical area, nor a micropolitan statistical area adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget. A county is considered to be **underserved** if no more than 2 creditors extend covered transactions secured by a first lien 5 or more times in that county during a calendar year.