



News From the FAMP Government Affairs Committee

VA issues "qualified mortgage" definition for VA guaranteed or insured loans

By Marc Patterson
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On May 9, 2014, the Department of Veterans Affairs (VA) issued an interim final rule defining a qualified mortgage (QM) for VA insured and guaranteed loans. Under the proposed rule, all purchase money origination loans and refinances other than certain interest rate reduction refinance loans (IRRRL) guaranteed or insured by the VA are defined as safe harbor QM loans. The interim final rule also designates as a QM: (1) any loan that the VA makes directly to a borrower; (2) Native American direct loans; and (3) vendee loans, which are made to purchasers of properties the VA acquires as a result of foreclosures in the guaranteed loan program. The rule is effective May 9, 2014.

The VA's rule will replace the CFPB's temporary QM rule that exempts VA loans from the strict 43 percent DTI ratio threshold that applies to general QM loans. In general, all VA loans are safe harbor QM loans regardless of whether the loan is a high cost mortgage or exceeds the CFPB's DTI ratio limit, subject to certain exceptions pertaining to VA IRRRLs. Consequently, the APR and DTI ratio on a VA loan has no effect on its safe harbor status.

Note that while all VA IRRRLs (also known as streamlined refinance loans) are considered QM loans, not all such IRRRLs are safe harbor QM loans. However, the VA IRRRLs that are not classified as safe harbor QM loans are still entitled to a rebuttable presumption that they

meet the ability-to-repay requirements. In order for a VA IRRRL to be considered a safe harbor QM, the loan must meet the following conditions:

- The loan being refinanced was originated at least 6 months before the new loan's closing date
- The veteran has not been more than 30 days past due during the 6 months preceding the new loan's closing date
- The recoupment period for all allowable fees and charges financed as part of the loan or paid at closing does not exceed 36 months
- All other VA requirements for guaranteeing an IRRRL are met.

In addition, VA IRRRLs are excluded from the CFPB's income verification requirements if seven enumerated criteria are met, including the condition that the total points and fees do not exceed 3% of the total loan amount. Note that the VA did not incorporate the higher point and fee limits for streamlined refinance loans below \$100,000. The VA estimates that the exemption will shorten the closing time for qualifying streamlined refinances by 2-4 weeks.

In adopting the interim final rule, the VA noted that of the loans that the VA guaranteed in FY 2013 over 95,000 would have exceeded the CFPB's strict 43% DTI ratio, and nearly 5,000 would have exceeded the APR limit to qualify for the QM safe harbor. The VA stated that it needed to address and ease concerns of veterans, lenders, and investors on the potential effect of the QM requirements on the VA's programs, and issued this interim final rule to provide legal certainty and re-stabilize the market for VA loans.

Please note that the VA has provided a short, 30-day comment period for the interim final rule. Comments are due on or before June 9.