

Revised CFPB Ability to Repay Rule Allows Excess Points and Fees Refunds for Qualified Mortgages

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The Dodd-Frank Act amended the Truth in Lending Act (TILA) to require a creditor making a residential mortgage loan to make a reasonable and good faith determination (based on verified and documented information) that, at the time the loan is consummated, the consumer has a reasonable ability to repay it. It further provides that the ability-to-repay requirements are presumed met if the loan is a “qualified mortgage.” Qualified mortgages are subject to certain requirements, for example, points and fees charged to the consumer on a qualified mortgage generally cannot exceed 3 percent of the loan principal at the time the loan is made. On October 17, the Consumer Financial Protection Bureau (CFPB) made minor changes to the mortgage rules to provide limited circumstances where lenders that exceed the points and fees cap under the Ability to Repay Rule may refund the excess amount, plus interest, to consumers, while allowing the loan to still be considered a “qualified mortgage.” Under the finalized amendments if, after the loan has closed, a lender or assignee discovers that it has exceeded the 3 percent cap, the lenders can refund the excess amount with interest to the consumer, so the loan still meets the legal requirements of a qualified mortgage, under limited conditions. The creditor must have originated the loan in good faith as a qualified mortgage, the refund on the overage must be given within 120 days of consummation, and the creditor or assignee must maintain and follow policies and procedures for post-consummation review of loans and refunding such points and fees overages to consumers.

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