

**Ability-to-Repay/Qualified Mortgage (ATR/QM)**, effective January 10, 2014, creates general requirements for a Qualified Mortgage (QM) that addresses product standards, minimum underwriting and documentation requirements and also limits “points and fees” to 3% of total loan amount.

## IMPORTANT DEFINITIONS

**Qualified Mortgage (QM)** – A qualified mortgage is a home loan that meets certain standards set forth by the federal government. Lenders that generate such loans will be presumed to have also met the Ability-to-Repay rule mandated by the Dodd-Frank Act.

Limits on Loan Features	<ul style="list-style-type: none"> <li>• No negative amortization or interest-only periods</li> <li>• No balloon payments (exception for portfolio loans by small creditors in rural or underserved areas)</li> <li>• Loan term may not exceed 30 years</li> </ul>
Points and Fees Cap	<ul style="list-style-type: none"> <li>• Generally 3% of total loan amount</li> <li>• Higher caps for loans &lt;\$100,000</li> <li>• Up to two additional bona fide discount points allowed, depending on rate</li> </ul>
Relevant Underwriting Requirements	<ul style="list-style-type: none"> <li>• Use maximum rate in first five years after first payment, full amortization</li> <li>• Consider and verify income and assets</li> <li>• Consider and verify current debt obligations, alimony and child support</li> <li>• Monthly DTI cannot exceed 43%; OR</li> <li>• Must be eligible for purchase, guarantee or insurance by               <ul style="list-style-type: none"> <li>-- Fannie Mae or Freddie Mac</li> <li>--HUD, VA, RHS/USDA</li> </ul> </li> </ul>

**Temporary QM** – Agency eligible or government insured or guaranteed loan underwriting and documentation standards remain in place until the government agencies write their own QM rules, the GSE conservatorships end or after a period of seven years.

**Ability-to-Repay** – At minimum, the following underwriting factors must be considered: (1) current or reasonable expected income or assets; (2) current employment status; (3) monthly payment on the subject transaction; (4) monthly payment(s) for mortgage obligations; (5) current debt obligations, including alimony or child support; (6) DTI and residual income; and (7) credit history.

**APOR** – Average Prime Offer Rate

**Safe Harbor** – The final rule provides a safe harbor for loans that satisfy the definition of a qualified mortgage and are not “higher-priced.”

**Rebuttable Presumption** – The final rule provides a rebuttable presumption for higher-priced mortgage loans. Specifically, it provides that borrowers may show a violation by showing evidence that, at the time the loan was originated, the borrower’s income and debt obligations left insufficient residual income or assets to meet living expenses.

Safe Harbor	<ul style="list-style-type: none"> <li>• Loan satisfies QM criteria; and</li> <li>• APR is less than APOR + 1.5%</li> </ul>
Rebuttable Presumption	<ul style="list-style-type: none"> <li>• Loan satisfies QM criteria; and</li> <li>• APR equals or exceeds APOR + 1.5%</li> <li>• Rebuttal limited to insufficient residual income</li> </ul>

**Affiliated Business** – Affiliate means any company that controls, is controlled by or is under common control with another company.

**Total Loan Amount** – The amount financed from the Truth-in-Lending statement minus fees included in the loan amount.

**Bona Fide Discount** – An amount paid by the consumer that reduces the interest rate applicable to the transaction. This amount is based on a calculation that is consistent with established industry practice for determining the amount of reduction in the interest rate for the amount of discount points paid by the borrower.

**Definition/Calculation of Points and Fees** – The final rule sets a threshold for smaller loans and establishes tiers, based on loan size, with different limits on points and fees.

## QM MAXIMUM POINTS AND FEES CHART

Loan Amount	“Points and Fees” cannot exceed
\$100,000 and greater	3%
\$60,000 to \$99,999	\$3,000
\$20,000 to \$59,999	5%
\$12,500 to \$19,999	\$1,000

## QM AND TEMPORARY QM LOANS

The ability to repay is satisfied if the borrower DTI is not greater than 43% and the lender used documentation to verify income and assets **OR** the loan is eligible for purchase, guarantee or insurance by one of the following entities:

- Fannie Mae or Freddie Mac, while operating under the conservatorship or receivership of the FHFA or when conservatorship ends or no later than January 10, 2021
- HUD
- VA
- USDA/RHS

QM loans subject to Safe Harbor	“Temporary” QM loans subject to Safe Harbor
<ol style="list-style-type: none"> <li>1. “Points and fees” do not exceed 3% of the total loan amount; and</li> <li>2. Borrower has a total DTI that is less than or equal to 43%; and</li> <li>3. The lender used documentation to verify income and assets; and</li> <li>4. The APR on the transaction is less than 1.5% above the APOR</li> </ol>	<ol style="list-style-type: none"> <li>1. “Points and fees” do not exceed 3% of the total loan amount; and</li> <li>2. The loan is eligible for purchase, guarantee or insurance by: <ol style="list-style-type: none"> <li>a. The GSE’s while they are under conservatorship or</li> <li>b. HUD or</li> <li>c. VA or</li> <li>d. USDA; and</li> </ol> </li> <li>3. The APR on the transaction is less than 1.5% above</li> </ol>

	the APOR
<b>QM loans with Rebuttable Presumption</b>	<b>“Temporary” QM loans with Rebuttable Presumption</b>
1. Loan meets the above criteria; except a. The loan is “higher-priced” (APR equals or exceeds the APOR by more than 1.5%)	1. Loan meets the above criteria; except a. The loan is “higher-priced” (APR equals or exceeds the APOR by more than 1.5%)
<b>Non-QM loans</b>	<b>“Temporary” Non-QM loans</b>
1. Interest-only transactions	N/A – no temporary rules

## QM POINTS & FEES INCLUDED AND EXCLUDED

<b>INCLUDED IN QM POINTS AND FEES</b>	<b>NOTES</b>
Pre-paid finance charges	Exceptions are listed in the excluded from QM points and fees chart
Compensation paid to broker	Borrower-Paid or Lender-Paid
Real-estate related fees if paid to an affiliate of the broker or the lender	These fees are included only if they are paid to an affiliate of the broker or lender or the fee is not reasonable: <ul style="list-style-type: none"> <li>• Fees for title examination, abstract of title, title insurance, property survey, and similar</li> <li>• Fees for preparing deeds, mortgages, and reconveyance or settlement documents</li> <li>• Notary and credit report fees</li> <li>• Property appraisal fees or fees for inspections</li> <li>• Escrow/Settlement fees</li> </ul>
Prepayment penalties	Interest charged consistent with the monthly accrual on FHA loans consummated before January 21, 2015 is not a prepayment penalty.
<b>EXCLUDED IN QM POINTS AND FEES</b>	<b>NOTES</b>
Per diem Interest	
Bona fide third party charge not retained by the broker or the lender or an affiliate of the broker or lender	These fees are excluded only if they are not paid to an affiliate of the broker or lender: <ul style="list-style-type: none"> <li>• Fees for title examination, abstract of title, title insurance, property survey, and similar</li> <li>• Fees for preparing deeds, mortgages, and reconveyance or settlement documents</li> <li>• Notary and credit report fees</li> <li>• Property appraisal fees or fees for inspections</li> <li>• Escrow/Settlement fees</li> </ul>
Mortgage Insurance	Any premium payable to HUD, VA, USDA/RHS
Some Private Mortgage Insurance	The premium is excluded if: <ul style="list-style-type: none"> <li>• The portion that does not exceed FHA MIP (currently 1.75%)</li> <li>• The premium is refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the loan</li> </ul>
Discount Points	Specifically, 2 discount points are excluded if the loan’s interest rate, without any discount, does not exceed: <ul style="list-style-type: none"> <li>• The APOR by more than 1%</li> </ul>

*This communication is not intended to provide legal advice, but is meant to be a high-level summary to provide clients with an understanding of the Qualified Mortgage and Ability-to-Repay Rule. The information is subject to change as Plaza continues to obtain clarification. 8/28/2013*

	Specifically, 1 discount point is excluded if the loan's interest rate, without any discount, does not exceed: <ul style="list-style-type: none"> <li>• The APOR by more than 2%</li> </ul>
Seller's Points	Certain charges paid by a seller may be excluded if they are not specifically among the charges listed in the chart as charges included in QM Points and Fees

## ADDITIONAL RESOURCES

A summary of the Final Rule and Official Interpretations can be found at:

<https://www.federalregister.gov/articles/2013/06/12/2013-13173/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z>

The Final Rule can be found at:

[http://files.consumerfinance.gov/f/201301\\_cfpb\\_final-rule\\_ability-to-repay.pdf](http://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf).